Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD,
APPELLANTS,

vs.

HENRY C. KING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Motion on Behalf of the State of West Virginia.

That the decree in the court below be declared null and void;

That all proceedings in this case in this court and in the court below be set aside and annulled;

That the decree below be reversed without considering the merits of the case, or (in the alternative) that the appeal to this court be dismissed, and that in either event a dismissal of the bill herein be directed;

That Maynard F. Stiles and Henry C. Flesher, attorneys of this court and heretofore acting counsel in this case, be disbarred; and

That the court take into consideration the conduct of the said attorneys in this case as ground for proceeding against them for contempt of the court.

On Monday, January 21, 1901, by order of this honorable court, the submission of the above-entitled case was set aside and the cause was restored to the docket for oral argument; the clerk of this court was also directed to bring the order of the court to the attention of the attorney general of West Virginia.

Edgar P. Rucker, by whom the State appears for the purposes of this motion, was then the attorney general of the State of West Virginia, and, in accordance with the order of this court, the proceedings had by it in this case were brought to his attention by the clerk of this court.

The questions sought to be raised in this case having an important bearing upon the revenues of the State of West Virginia, involving a direct attack on its constitution and statutes, and directly affecting the titles to a very large area of its land, the governor of the State sent to the legislature a special message calling attention to the pendency of the case.

Thereupon the legislature, on February 13, 1901, adopted a joint resolution reciting that it was important to the State that the provisions of its constitution forfeiting lands for non-entry for five years and transferring such lands to certain classes of claimants and occupants should be upheld, to the protection of the State's revenue and for the titles of many of her citizens, such resolution also authorizing and directing the board of public works of the State to employ its attorney general and other counsel, if deemed advisable, to appear on behalf of the State and argue the cause in this court, as far as its rules and practice would permit.

A certified copy of said joint resolution is herewith filed, marked Exhibit "A" of this motion.

On February 14, 1901, the board of public works of the

State of West Virginia, in pursuance of said action of the legislature, by resolution authorized and directed Edgar P. Rucker, the attorney general, to appear in this court and make such defense in this case and take such action in regard thereto as, in his opinion, might be necessary to uphold the constitutional provisions aforesaid, and to maintain and preserve the property rights of the citizens of this State, vested in them by reason of the operation of the said constitutional provisions.

Copy of the said resolution of the board of public works is herewith filed, marked Exhibit "B" of this motion.

Although the term of office of the said Edgar P. Rucker, as attorney general, has ended, he is, by virtue of the resolution aforesaid and his continued employment in this case by the proper officers of the State of West Virginia, duly authorized to appear here and represent its interests in said case.

Said counsel for the State, desiring and intending to the best of his ability to maintain and uphold the validity of the constitutional provisions and statutes aforesaid, first investigated the history of this case and the proceedings had therein for the purpose of ascertaining in what manner the questions as to such constitutional provisions were presented, and for said purpose he also conferred with the representatives of private interests affected thereby. Upon such investigation and conference facts were brought to the attention of the attorney for the State which have satisfied him that this case presents to the court no real controversy, but that it is wholly a fictitious proceeding, entirely under the control of the said Henry C. King and his counsel, feigned by the said King and his said counsel for the purpose of obtaining from this court, in the absence of any real opposition, an opinion and decree which would affect injuriously the revenues of the State of West Virginia and the titles to a very large area of its lands; and, further, that the pendency of this suit has, as far as possible, been concealed from the

numerous persons whose interests might be affected by its result and were intended to be so affected.

The attorney for the State is advised that the facts which have thus come to his knowledge should be laid before the court in order that such proceedings may be had as are necessary and proper to prevent the wrong and fraud which has thus been attempted, and to put it in the power of the court to take such steps as to it may seem proper with respect to the persons concerned in such attempted wrong and fraud.

The facts above mentioned are fully set forth in the several motions of Stuart Wood and others, Nancy Browning, Egbert Mills, and A. M. Toler, together with the affidavits and other documentary evidence submitted as exhibits thereof, which motions and exhibits have been read and considered by the attorney for the State of West Virginia, and which it is expected and intended will be filed in this court at the same time as this motion.

The attorney for the State of West Virginia is satisfied that the several allegations of the said motions and exhibits are true, and he refers to and adopts the same as part of this motion, and prays that they may be so regarded by the court.

In consideration whereof the State of West Virginia, by Edgar P. Rucker, its attorney, as aforesaid, moves this honorable court:

1. That the decree appearing to have been entered in the above-entitled case on the 2d day of June, 1900, by the circuit court of the United States for the district of West Virginia, sitting at Charleston, in said State, may by this court be declared and decreed to be a nullity;

2. That all proceedings had in this court before the said 21st day of January, 1901, and all proceedings in this cause in the said circuit court of the United States for the district of West Virginia be set aside and held for naught;

3. That the said decree of the circuit court, entered on the 2d day of June, 1900, may, by the decree of this court, be reversed without considering the merits of the case, or (in the alternative) that the appeal here be dismissed, and that in either event a dismissal of the bill herein be directed by this court;

4. That Maynard F. Stiles and Henry C. Flesher, attorneys of this court, be disbarred;

5. That this court take into consideration the conduct of the said attorneys in this cause as ground for proceeding against them for contempt of the court;

6. To the ends aforesaid, and in order that due notice of this motion and the proceedings thereon may be given, that all necessary or proper rules or orders be made by this court, directed to the said Henry C. King, Maynard F. Stiles, and Henry C. Flesher, to be served and returned here, as this court may order and direct; and

7. For such other and further relief as, upon the facts shown to the court, may to it seem meet and proper.

STATE OF WEST VIRGINIA,
By EDGAR P. RUCKER, *Counsel.*

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 221.

SARAH D. HATFIELD ET AL., APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Petition of Intervention and Motion to Dismiss of A. M. Toler.

The petitioner, A. M. Toler, respectfully represents unto the court that he on the — day of ——, 18—, intermarried with Martha Hatfield, the daughter of Aly Hatfield, who, by deed dated the — day of ——, 1861, conveyed unto his said daughter, Martha, the wife of this petitioner, two tracts of land then situate on Ben creek, in Logan county, Virginia, now Mingo county, West Virginia, the one containing about 150 acres and being a part of the 330-acre tract described in the record of this cause as patented to Aly Hatfield, and the other containing about 50 acres, adjoining the first tract, and likewise being a portion of the Aly Hatfield land. A copy of said deed is exhibited with the petition herein of Stuart Wood *et al.*

That issue were born alive unto the petitioner and his wife, the said Martha, and that the said Martha subsequently died leaving your petitioner and said issue surviving her, whereby your petitioner became and is, under the laws of the State of West Virginia, seized of an estate for his own life as tenant by the curtesy of the two tracts of land aforesaid, as well the one of 150 acres as the one of 50, that had been conveyed to his wife, as aforesaid.

That, being so seized, he and his children after the death of his wife continued in the actual, open, and adverse possession of said land until the present time and were in the actual possession of the same at the date of the institution of this suit in the circuit court of the United States for the district of West Virginia and are still in the actual possession thereof.

That Henry C. King claims to be the owner of a tract of 500,000 acres of land situate in the States of Virginia, West Virginia, and Kentucky, which, according to the contention of the said King, embraces within its boundaries the two tracts of land of your petitioner aforesaid, and, so claiming said land, instituted an action of ejectment in the circuit court of the United States for the district of West Virginia against the petitioner and many others owning lands within the alleged boundaries of said 500,000-acre survey for the purpose of recovering the same, which said ejectment is still pending and undetermined as to the petitioner and many other of the defendants therein.

That this petitioner and the other defendants in said ejectment, as he is informed, will rely in part, as a defense thereto, upon the fact that the title of the said King to said 500,000 acres of land has forfeited to the State of West Virginia by reason of the failure of the said King to have the same entered for taxation, under the constitution of said State, upon the land books of the proper county for five successive years since the year 1869, and by virtue of the provisions of said constitution the title so vested in the State has been

transferred to junior claimants of the land. And the said King, upon the other hand, will contend that the provision of the State constitution aforesaid relied upon by the petitioner and the other defendants to said action of ejectment is in conflict with the provisions of the Federal Constitution, null and void, and that his title to said land is in consequence not forfeited to the State of West Virginia and has not been transferred to junior claimants of the land, and that such alleged forfeiture neither does nor will constitute a defense to said action of ejectment.

That the said Henry C. King, desiring to obtain an opinion of this court upon the constitutional question aforesaid that would be prejudicial to the title and interests of this petitioner and the other defendants to the action of ejectment, as this petitioner is informed and believes, instituted the present suit in the circuit court, and, through his counsel, M. F. Stiles, procured Henry C. Flesher, an attorney practicing in said court, to appear thereto without any authority whatever, as counsel for the sole defendants therein, and without their knowledge or the knowledge of either of them, and to make such defense thereto as would falsely give the court jurisdiction, omitting the defense of the statute of limitations, and presenting the constitutional question aforesaid in as favorable light as possible to the contention of the said King.

That, as this petitioner believes, it was the aim and object of the said M. F. Stiles and Henry C. Flesher to have this suit so conducted as that all but fictitious and collusive defenses thereto would be prevented, and in consequence and in pursuance of such object Sarah D. Hatfield and Nancy C. Rutherford (now Nancy C. Browning) were alone made defendants thereto, notwithstanding the interest of the petitioner in and his pos-session of a portion of the very land in question, and process was not issued against or served upon even the said Sarah D. Hatfield or Nancy C. Rutherford, but the said Henry C. Flesher, as this petitioner believes, colluding, as aforesaid, with the said Stiles, attorney for the

said H. C. King, entered an appearance for both of them without their knowledge or authority.

Your petitioner further says that after the rendition of the decree of the circuit court herein in favor of the said H. C. King the said Flesher appealed the cause to this court in the name of the defendants below, and without their knowledge or consent, and for the purpose of procuring the judgment of this court upon the constitutional question aforesaid in an unauthorized, collusive, and fictitious suit, as aforesaid, and to the end that this petitioner and others might be prejudiced thereby.

Reference is here made to the affidavits of Sarah D. Hatfield, Nancy C. Browning, John A. Sheppard, W. E. Chilton, William R. Thompson, and to the petition and motion of Stuart Wood and others filed herein, and they are asked to be read and considered in connection with this petition.

Your petitioner therefore prays that he be permitted to intervene here, and that the decree herein be reversed and the cause remanded for the following reasons, to wit:

1st. Because the suit is fictitious and collusive.

2d. Because the suit was instituted and is now prosecuted not to determine any real controversy between the parties to the record, but to obtain a decree on which to prosecute actions of ejectment against persons really interested adversely to the appellee, but not parties to the record, and among them this petitioner.

3d. Because this suit is a fraud upon and in contempt of this and the circuit court.

And your petitioner prays such other relief and action by the court as may be conformable to its rules and the principles of equity.

HOLMES CONRAD,
C. W. CAMPBELL,
JOHN H. HOLT,
Attorneys for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 221.

SARAH D. HATFIELD ET AL., APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Petition of Intervention and Motion to Reverse and Remand of Arthur D. Bright.

The petitioner, Arthur D. Bright, respectfully represents unto the court that he is the owner of the mineral in and under three certain tracts of land situate on Ben creek and the waters thereof, in the county of Mingo, State of West Virginia, the one containing 140 acres and the other containing 450 acres, as well as the owner of the mineral in and under all that portion of a third tract containing 330 acres, likewise situate on Ben creek, in the said county, that was not conveyed by Aly Hatfield to his daughter, Martha Hatfield, subsequently Martha Toler, all of which said tracts

are known as the Aly Hatfield land, and are the same tracts described in the plaintiff's bill in this cause, and the Hatfield title to which was canceled, at the prayer of the plaintiff, by the decree of the circuit court herein.

That Henry C. King, the appellee, claims to be the owner of a tract of 500,000 acres of land situate in the States of Virginia, West Virginia, and Kentucky, which, according to the contention of said King, embraces within its boundaries the three tracts of land above described, and the mineral under which is owned by your petitioner, and, so claiming said land, instituted an action of ejectment in the circuit court of the United States for the district of West Virginia against Sarah D. Hatfield, the owner of the surface of the three tracts aforesaid, and many other persons owning lands within the alleged boundaries of the said 500,000-acre survey for the purpose of recovering the same, which said ejectment is still pending and undetermined as to many of the defendants thereto.

That this petitioner, when he shall likewise be impleaded, as he believes he will be, by the said King and the other defendants to said ejectment, as he is informed, will rely in part as a defense thereto upon the fact that the title of the said King to said 500,000 acres of land has forfeited to the State of West Virginia by reason of the failure of said King to have the same entered for taxation, under the constitution of the State of West Virginia, upon the land books of the proper county for five successive years, since the year 1869, and by virtue of the provisions of the said constitution the title so vested in the State has been transferred to junior claimants of the land; and the said King, upon the other hand, will contend that the provision of the State constitution aforesaid relied upon by the petitioner and the other defendants to the present action of ejectment is in conflict with the provisions of the Federal Constitution, null and void, and that his title to said land is in consequence not forfeited to the State of West Virginia, and has not been

transferred to junior claimants of the land, and that said alleged forfeiture neither does nor will constitute a defense to said action of ejectment.

That the said Henry C. King, desiring to obtain an opinion of this court upon the constitutional question aforesaid that would be prejudicial to the title and interests of this petitioner and the defendants to the present action of ejectment, as this petitioner is informed and believes, instituted the present suit in the circuit court, and, through his counsel, M. F. Stiles, procured Henry C. Flesher, an attorney practicing in said court, to appear thereto, without any authority whatever, as counsel for the defendants therein, and without their knowledge or the knowledge of either of them, and to make such defense thereto as would falsely give the court jurisdiction, omitting the defense of the statute of limitations and presenting the constitutional question aforesaid in as favorable light as possible to the contention of the said King.

That, as this petitioner believes, it was the aim and object of the said M. F. Stiles and Henry C. Flesher to have this suit so conducted that all but fictitious and collusive defenses thereto would be prevented, and that in consequence and in pursuance of such object Sarah D. Hatfield and Nancy C. Rutherford (now Nancy C. Browning) were alone made defendants thereto, notwithstanding the interest of the petitioner in the very land in question, and process was not issued against or served upon even the said Sarah D. Hatfield or Nancy C. Rutherford; but the said Henry C. Flesher, as this petitioner believes, colluding, as aforesaid, with the said Stiles, attorney for the said Henry C. King, entered an appearance for both of them without their knowledge or authority.

Your petitioner further says that after the rendition of the decree of the circuit court herein in favor of the said Henry C. King the said Flesher appealed the cause to this court in the name of the defendants below, and without their knowl-

edge or consent, and for the purpose of procuring the judgment of this court upon the constitutional question aforesaid in an unauthorized, collusive, and fictitious suit, and to the end that this petitioner and others might be prejudiced thereby.

Reference is here made to the affidavits of Sarah D. Hatfield, Nancy C. Browning, John A. Sheppard, W. E. Chilton, William R. Thompson, Edward C. Lyon, and to the petition and motion of Stuart Wood and others filed herein, and they are asked to be read and considered in support of this petition.

Your petitioner therefore prays that he be permitted to intervene here, and that the decree herein be reversed and the cause remanded for the following reasons, to wit:

1st. Because the suit is fictitious and collusive.

2d. Because the suit was instituted and is now prosecuted, not to determine any real controversy between the parties to the record, but to obtain a decree on which to prosecute actions of ejectment against persons really interested adversely to the appellee, but not parties to the record, and among them this petitioner.

3d. Because this suit is a fraud upon and in contempt of this and the circuit court.

And your petitioner prays such other relief and action by the court as may be conformable to its rules and the principles of equity.

W. P. Hubbard,
Attorney for Petitioner.

EXHIBIT No. 1.

STATE OF WEST VIRGINIA, }
—— *County,* } *To wit:*

John A. Sheppard, being duly sworn, upon his oath says: "I am counsel for persons interested against the claims made by Henry C. King under the Robert Morris patent for five hundred thousand acres. Although I had endeavored to keep myself fully informed as to the state and progress of all litigation in both the State and United States courts in West Virginia with reference to that title since 1894, and supposed I had done so, I did not hear of the existence of the case of Henry C. King against Sarah D. Hatfield and Nancy C. Rutherford until about three weeks, as affiant is informed, after it was submitted to the Supreme Court of the United States.

My clients thereupon requested me to make an investigation with regard to that case, its good faith, its progress and its condition, and in endeavoring to comply with that request I applied to Sarah D. Hatfield as well as to other persons for information on the subject.

My first interview with Mrs. Hatfield was about February 20, 1901. Learning at that time that she was in the town of Williamson, W. Va., where I reside, I sent J. M. Toler to request her to come to my office, and she came in company with him and other persons. I asked her if she knew that there was a case pending in the Supreme Court of the United States styled Sarah D. Hatfield and Nancy C. Rutherford *vs.* Henry C. King in which it had been decided by Judge Jackson that their title to the land on which they lived was void and that the lands were rightfully owned by Henry C. King. She said she knew of the case but did not consider that she had lost her land. I requested her then in several questions to tell me what she did know about that case and what arrangement, if any, she had with any person to secure her land. She declined to tell me what arrangement she had made about her lands, but said that she expected to live on the lands as she had before. I then stated to her that the court had decided that she had no title to the lands and that

she would certainly have to move off if the Supreme Court of the United States sustained that decision. She seemed to have no fears as to the loss of her land, and I received the impression that she had made an arrangement with King or those acting for him by which they were to reconvey to her the lands that they had recovered by the decision of Judge Jackson, whereupon I told her that I wanted to give her to understand plainly that the course she was taking in the case was establishing a precedent that would act to the prejudice of her neighbors and all others owning land inside of the King claim, and that I felt like telling her plainly that we, meaning those interested adversely to King, felt like we knew that she had entered into a collusive arrangement with King. She, however, declined to make any further statement as to how she expected to hold her land. She left my office without giving me information as to what she had done in relation to the case.

Later I was told by Crockett Allison, one of her neighbors, that he believed Mrs. Hatfield was willing to reveal what had actually occurred between her and Henry C. King's representatives in relation to her land. I told Mr. Allison to see her, and if she was willing to do so to bring her back to Williamson, which he did. She came to my office in company with said Allison a month or two later and told me that she had been thinking over what I had said to her when there before, and that she did not know that the arrangement she made with King's representatives would operate to the prejudice of any other person, and after thinking the matter over fully she decided she would tell me what she had done, but that if she did tell me she would want me to promise her that I would not use it, or if I did use the information that I would see that she would be protected in the ownership of her land, and in case the information she gave me would cause her to lose the land that I should see that she was paid for it. I told her that I could not obligate myself either to save her lands for her or to pay her for the same in the event of their loss, but I said to her that I would not use the information unless she consented thereto, and that if she felt like revealing to me what she had done with King's representative after what I had said to her, that I would be glad to have her tell me.

Mrs. Hatfield and myself had been well acquainted for the last fifteen years. Her husband Joseph Hatfield and myself

were very friendly during his lifetime, and I was often at his house, and in that way especially became well acquainted with Mrs. Hatfield.

Mrs. Hatfield said to me that she knew I had been fighting for the citizens in the various suits brought by Henry C. King against them and that I ought to know more about it than she, and she wanted to tell me what she had done and see whether she had done wrong or had put herself in an improper position. She then told me the arrangement she had made with M. F. Stiles, attorney for Henry C. King, which is set out in detail in her affidavit dated on the 30th of September, 1901.

After she had repeated to me the substance of what is stated in the affidavit mentioned, I again told her that I could not use this information except by her consent, and that I would not use it if I determined that its use would injure her in her chances of recovering her lands. She stated that if the people I represent would agree to pay her for the lands in case she lost them, that they might then use the information that she had given me, but I told her that I could not make her such a promise. Afterwards I had a conference with associate counsel, and it was decided that I should obtain an affidavit from Mrs. Hatfield setting forth the agreement between her and Stiles, the representative of King, which I did on the 30th of September, 1901. When she gave me the affidavit I gave her a letter bearing the same date. A copy of my letter is hereto attached. She stated to me that if I should use the affidavit and King and his representatives had any intention of reconveying to her the lands she had lost by the decree, that they would then not convey the land to her at all, but if the action she had taken was likely to *cost* other people to lose their lands that she was willing that I should use this affidavit providing that I would see that she was paid for her lands. I told her that I could not make such promise and that all that I could say to her on the subject was what was stated in my letter above referred to. I had in mind at the time that she might have been guilty of collusion with King's representatives in the cause styled Henry C. King *vs.* Simon S. Altizer and others, and in the agreed statement of facts signed William Claypool, S. D. Hatfield and *her* Nancy C. Rutherford by Henry C. Flesher, their attorney, but that collusive agreement between them did not extend to the case styled Sarah

D. Hatfield and Nancy C. Rutherford *vs.* Henry C. King, pending in the Supreme Court of the United States, and therefore as a legal proposition she would not be found guilty of fraud in the last-mentioned case and left by the court under the rule in such cases as it found her, but that she would be able to make defence against the decree standing in favor of King as much as her daughter would be. Therefore I said to Mrs. Hatfield that if I decided that she could make defence against the decree and that her action in the first instance would not bind her in the case in the Supreme Court that I would use her affidavit, but if I decided otherwise I would not use it, and if my clients thought the affidavit was of such importance as that they should want to use it they could arrange with her about the use of it."

Affiant further says, that he was employed as associate counsel and took part in the trial in the court below of the case of Henry C. King *vs.* Mullins and McClintock. On the first trial Judge Jackson presided which resulted in the disagreement of the jury, and on the second trial Judge Goff presided resulting in the verdict and judgment for the defendants; that he also took part as counsel for defendants in the trial of the case of King *vs.* Elk Horn and Sandy River Land Trust at Harrisonburg, Virginia, in 1895, and King *vs.* Watkins, Campbell and others at Abington, Virginia in 1899, at both of which trials Judge Paul of the western district of Virginia presided; that upon each of said trials one of the chief questions at issue was, the true location of the 500,000 acres of land known as the Robert Morris grant claimed by King—the said King contending that only the first line of the survey was run by the original surveyor prior to the grant and that all the other lines were platted in his office and without knowledge of or familiarity with the location of the water-courses and corners called for in the grant, or the territory covered thereby. While the defendants then and now claim that said grant should be located according to the natural monuments found and identified and marked corner trees shown to have existed at the places called for in the grant instead of locating said tract by course and distance as contended for by King, and that where there is a conflict between the courses and distances and such natural monuments and marked corner trees, that the latter should prevail.

Affiant further says, that if the western boundary line of

such grant be located from the corner called for by a small branch of Knox creek, crossing said Knox creek at about four miles, Sandy river at twelve miles at the mouth of Turkey creek, the dividing ridge between Sandy river and Guyandotte river, crossing Gilberts creek twice to three sugar trees in a bottom of Guyandotte river about 20 poles below the mouth of Gilberts creek, then the lines of S. D. Hatfield and Nancy C. Browning are not within the Morris grant but lie to the west thereof. The existence and location of said Gilberts creek, Turkey creek and Knox creek are well known, and that the fact of such contention of the location of said western boundary line was and is notorious among the people throughout the larger portion of the counties of Logan, Wyoming, Mingo and McDowell, West Virginia, and was especially well known among all the lawyers engaged in any way in the litigation set on foot by said King.

JNO. A. SHEPPARD.

Taken, subscribed and sworn to before me as witness my hand and seal this 11th day of October, 1901.

[Seal of Geo. W. A. White, Notary Public, District of Columbia.]

GEO. W. A. WHITE,
Notary Public.

EXHIBIT No. 2.

STATE OF WEST VIRGINIA, } *To wit:*
County of Kanawha, }

William E. Chilton, being first duly sworn, upon his oath says that he is 43 years of age; that he resides in the city of Charleston, in said county and State, and that he is an attorney-at-law by profession; that he is one of the defendant- in an action of ejectment brought about 1895 in the circuit court of the United States for the district of West Virginia, by Henry C. King against S. S. Altizer or —— Williamson, and numerous others; that when said action of ejectment was brought, and for a considerable time thereafter, he claimed, title to a certain boundary of land of several thousand acres, situated on Alum creek of Tug river, formerly Logan county, but now Mingo county, West Virginia, which boundary is composed of a number of small contiguous tracts, some of which were granted by patent to William Cline by the Commonwealth of Virginia, and some of which were granted by the State of West Virginia by deeds executed by the commissioner of school lands of said Logan county;

That afterwards affiant conveyed said boundary of land to the Brier Mountain Coal Company, with covenants of general warranty. Affiant further states that he participated as one of the attorneys for the defendants on the trial of the case of Henry C. King against Alexander McClintock, John McClintock and M. B. Mullins before the circuit court of the United States, for the district of West Virginia, sitting at Parkersburg, which trial resulted in a verdict and judgment in favor of said defendants, and to which judgment the said Henry C. King prosecuted a writ of error in the Supreme Court of the United States, in which court said judgment was afterwards affirmed.

That he is a member of the law firm of Chilton, MacCorkle & Chilton, and that said firm practices regularly in the circuit court of the United States for the district of West Virginia, especially at its sittings at Charleston, and that affiant attends regularly the sittings of said court in said city.

That he has been from the institution of said action of ejectment and now still is interested in the questions involved in said case; that he was so interested and that he had taken part in the defense of the ejectment aforesaid was well known to Millard F. Stiles, the attorney for Henry C. King.

Affiant further states that he is informed that the said Henry C. King instituted a suit in equity in the circuit court of the United States for the district of West Virginia at Charleston, against Sarah D. Hatfield and one Na-cy C. Rutherford, so called, for the purpose of cancelling and declaring null and void certain patents of land issued by the Commonwealth of Virginia and also certain deeds for land executed by the commissioner of school lands of Logan county, which lands, as affiant is informed, were and are claimed by said defendants Hatfield and Rutherford.

That affiant never knew of the institution or pendency of said cause in said court nor of the opinion filed by the judge in said cause or of the appeal taken to the Supreme Court of the United States until after the case was decided in said circuit court or after he heard it had been decided. That if affiant had had knowledge of the institution of said suit and its objects and purposes he would have made an effort to have been heard in opposition to the principles sought to be established by the bill in said cause; that as affiant is informed and believes a large number of the members of the bar practicing in the circuit court of the United States for the district of West Virginia, at Charleston, are interested for clients in the questions presented by said bill, and to affiant's knowledge many titles to land in West Virginia depend upon the validity of the constitution and laws of West Virginia forfeiting lands for non-entry and non-payment of taxes for five years.

That the litigation instituted by the said Henry C. King in the circuit court of the United States for the district of West Virginia has attracted wide attention among the bar of the southern part of said State and has directly affected numerous persons occupying and claiming lands within the boundary claimed to be embraced by the tract of land claimed by the said Henry C. King under the Robert Morris grant for 500,000 acres.

W. E. CHILTON.

Taken, subscribed and sworn to before me in my county and State aforesaid, this 7th day of October, 1901.

Given under my hand and notarial seal this 7th day of October, 1901.

[Seal of A. D. McCorkle, Notary Public, Kanawha County, W. Va.]

A. D. McCORKLE,
Notary Public in and for Kanawha County, West Virginia.

STATE OF WEST VIRGINIA, }
County of Kanawha, } *ss:*

I, E. W. Staunton, clerk of the county court of Kanawha county, in the State of West Virginia, do hereby certify, that A. D. McCorkle whose name is signed to the foregoing certificate, is now, and was at the time of signing the same, a notary public in and for said county and State, duly appointed and qualified, that to all his official acts full faith and credit are due and that his signature is genuine.

Seal County Court, Kanawha County, West Virginia.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 7th day of October, 1901, and in 39 year of the State.

E. W. STAUNTON,
Clerk Kanawha County Court.

EXHIBIT No. 3.

STATE OF WEST VIRGINIA, }
County of Cabell, } *To wit:*

I, William R. Thompson, upon my oath say that I am a member of the law firm of Vinson and Thompson and that the said firm has since the beginning of the litigation looking to the recovery of the Morris grant, now claimed by Henry C. King, been employed by a large number of people claiming adverse to the said King, and the said firm now represents a large number of adverse claimants, and a member of said firm has appeared in court representing some of the defendants in the case of King *vs.* Mullins, tried in the United States circuit court for the district of West Virginia; King *vs.* Watson, in the circuit court for the western district of Virginia; King *vs.* Campbell *et als.* in the same court; King *ads.* Vinson, receiver, *et al.*, in the circuit court of the United States for the district of West Virginia; and State *vs.* King *et al.*, in the circuit court of Cabell county, West Virginia; and that the members of said firm, Vinson and Thompson, have been reasonably diligent in keeping track of and watching all litigation in regard to the said King title; that this affiant knew nothing of the case of King *vs.* S. D. Hatfield and Nancy C. Rutherford and never heard of said suit until after the same had been taken to the Supreme Court of the United States upon a writ of error.

WM. R. THOMPSON.

Subscribed and sworn to before me in my said county, this 9th day of October, 1901.

E. M. WATTS,
Notary Public.

STATE OF WEST VIRGINIA:

CABELL COUNTY COURT CLERK'S OFFICE.

I, F. L. Doolittle, clerk of the county court of Cabell county, in the State aforesaid, do hereby certify that E. M.

Watts, whose name is signed to the annexed writing bearing date the 9th day of October, 1901, is a notary public in and for said county, duly appointed and qualified, and is authorized by the laws of this State to take the acknowledgment of deeds and other writings, to administer oaths, and to take affidavits; and that the name thereto subscribed is, I verily believe, his genuine signature.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at the court-house of said county, this 9th day of October, 1901.

[Seal County Court, Cabell County, West Virginia.]

F. L. DOOLITTLE,
Clerk Cabell County Court.

EXHIBIT No. 4.

JOURNAL OF THE HOUSE OF DELEGATES, SESSION OF 1901.

2 O'CLOCK P. M.

The house reassembled at the expiration of the recess.

On motion of Mr. Colcord, unanimous consent being given, house joint resolution No. 39,

Whereas, there is now pending in the Supreme Court of the United States a case styled "S. D. Hatfield *et al.*, appellants *vs.* Henry C. King," No 526 October term, 1900, on appeal from the circuit court of the United States for the district of West Virginia, rendered on June — last, which adjudges that sections 3 and 6 of article XIII of the constitution of this State, forfeiting lands for non-entry for five years and transferring the lands to certain classes of claimants and occupants, are null and void; and

Whereas, the said Supreme Court on the 21st day of January, 1901, ordered the said cause to be argued orally and that the attorney general of the State be furnished a copy of said order and of the records and briefs of counsel therein; and

Whereas, it is important to the State that said constitutional provision be upheld for the protection of the State's revenue and of the titles of many of her citizens, and others depending upon the validity of said provisions:

Therefore, pursuant to the recommendations of the governor of the State in a special message, be it

Resolved by the legislature of West Virginia, That the board of public works be, and is hereby authorized and directed to employ the attorney general of the State and other counsel if it should deem advisable, to appear on behalf of the State and argue said cause orally at the bar of said court, and also if permitted by said court, file printed briefs thereon.

Resolved further, That the foregoing resolution be referred to the committee on forfeited and delinquent lands.

Was taken up out of its order for immediate consideration, with the amendments thereto proposed by the committee on forfeited and unappropriated lands.

The clerk reported the amendments as follows:

Resolved, That the board of public works be, and it is hereby authorized and directed to employ the attorney general of the State at a compensation not to exceed $500.00, and obtain such other counsel as such board may see fit and be able to secure without any expense to the State, to appear on behalf of the State and argue said cause orally at the bar of said court, and, also, if permitted by said court, file printed brief thereon.

On motion of Mr. Alderson, the amendment was amended by striking out the figures "$500.00," and inserting in lieu thereof the figures "$1,000.00."

The question being on the adoption of the amendment, as amended, the same was adopted.

On the adoption of the resolution,

The ayes were:

Messrs. Wilson (speaker), Alderson, Aten, Baker, Bartlett, Brammer, Brannon, Bryant, Carter, Chambers, Christopher, Cochran, Colcord, Cushwa, Davies, Fisher (of Morgan), Good, Grant, Hall, Handley, Hanna, Harlow, Harris, Hays, Hearn, Hervey, Jarrett, Johnson, Kenney, Laughlin, Lilly, Lowry, Luzader, Martin, Mitchell, Morgan, Murphy, McClintic, McClure, Nicely, Owens, Pritchard, Reynolds, Roberts, Scherr, Sinclair, Smith (of Ohio), Smith (of McDowell), Stapleton, Steck, Talbot, Washburn, Wetzel, Willis, Wilson (of Wayne), Woodyard and Zinn.—57.

The noes were:—None.

Absent and not voting:

Messrs. Darst, Fisher (of Braxton), Grover, Henshaw, Jackson, Law, Millender, McCoy, McCulloch, McIntosh, Stump, Swisher, Via, and Williams.—14.

So a majority of those voting, having voted in the affirmative, the resolution was adopted.

Ordered, That Mr. Colcord communicate the adoption of the resolution to the senate, and request the concurrence of that body therein.

EXHIBIT No. 5.

At a meeting of the Board of Public Works of the State of West Virginia, held at the capitol, on the 14th day of February, 1901.

The legislature of this State now in session, having passed house joint resolution No. 39, providing that it shall be the duty of the board of public works to employ the attorney general of this State and to secure the services of other counsel for the purpose of defending the case of S. B. Hatfield *et al.*, appellants, *vs.* Henry C. King, appellee, now pending in the Supreme Court of the United States, in which it is contended by the appellee that sections 6 and 3 of the constitution of the State of West Virginia contravenes the 14th amendment to the Constitution of the United States, and the board of public works now deeming it important to the revenue of the State as well as to the upholding of the titles of many of her citizens to their lands; therefore, by virtue of the authority vested in this board by reason of said joint resolution, it is hereby

Resolved, That Edgar P. Rucker, the attorney general of this State, be and he is hereby authorized, empowered and directed to appear in the Supreme Court of the United States and make such defense in the case above mentioned, and take such steps as in his opinion are necessary to uphold the constitutional provisions aforesaid, and to maintain and preserve the property rights of the citizens of this State vested in them by reason of the operation of the constitutional provisions mentioned.

The attorney general is also authorized to secure the services of such other counsel, in accordance with the provisions of the joint resolution of the legislature above referred to, to assist him in said case as in his judgment may be deemed necessary. And it is further ordered that the attorney general be allowed the sum of $1,000 for his services in this case.

A copy.

Teste:

WM. M. O. DAWSON,
Secretary of the Board of Public Works.

EXHIBIT No. 6.

STATE OF WEST VIRGINIA, } *To wit:*
County of Mingo, }

Nancy C. Browning being first duly sworn upon oath says that she is thirty-one years of age; that she is the daughter of Joseph Hatfield, now deceased, and Sarah D. Hatfield; that she first married one John Rutherford now deceased and that on the 25th day of December 1895 she married her present husband Albert Browning.

Affiant further says she is informed that a suit in equity was brought against her as Nancy C. Rutherford and Sarah D. Hatfield, her mother, by one Henry C. King in the circuit court of the United States for the district of West Virginia for the purpose of cancelling two grants from the Commonwealth of Virginia to her grandfather Aly Hatfield in the year 1859, one for 450 acres and one for 330 acres, situate then in Logan county but now in Mingo county West Virginia on the left fork of Ben creek and also three certain deeds to her father Joseph Hatfield from the commissioner of school lands for Logan county, one for 72 acres one for 48 acres and one for 140 acres situate on said left fork of Ben creek and its waters and adjoining said tracts of 450 and 330 acres as clouds upon the alleged title of said Henry C. King to said lands under his claim of title to the Morris grant of 500,000 acres and that one Henry C. Flesher of Welch West Virginia pretended to appear for her in said suit as her attorney and to represent her therein.

Affiant further says that she had no notice or knowledge whatsoever that said suit was to be brought or was brought; that no summons to answer in said suit was served upon her or in any manner brought to her notice; that she never in any manner or at *at* any time directly or indirectly employed or authorized the said Henry C. Flesher to represent her in said suit or to appear for her therein or to represent her in any other controversy or matter pertaining to her said lands or the title thereto and that she never at any time authorized any other person or persons to employ said Flesher or any other attorney to appear for or represent her in said

suit; that she never authorized said Flesher to sign for her the agreement in writing purporting to have been made between Henry C. King this affiant and her mother Sarah D. Hatfield which she is informed was filed in the said circuit court of the United States for the district of West Virginia and refer-ed to in the plaintiffs' bill filed in said cause now pending on appeal as above recited and that she never authorized any other person to employ said Flesher or other person to sign such agreement; that she never until recently had any knowledge that said Henry C. Flesher had assumed to act for her in said suit or that he claimed authority to represent her as her attorney in any suit or matter whatever; that said Flesher has no authority to represent her in said suit pending on appeal as aforesaid which appeal she is informed has been taken from a decree against her and her mother to the Supreme Court of the United States where it is said that said appeal is now still pending and undetermined.

Affiant further says that had she known of the pendency of said suit while the same was pending in said circuit court of the United States for the district of West Virginia she would have employed counsel and made defense therein; that she has a good and valid defense to said suit—

First on the ground that the above tracts of land owned by affiant and her mother are not within said Morris grant and that said Henry C. King has no title to the lands of affiant and her mother above mentioned and

Second. If the said lands of affiant and her mother are within the said Morris grant the right claimed thereto by said Henry C. King has long since been barred by adversary possession held by her, her father and mother and her grandfather.

Affiant further says that the 450 and 330 acre tracts were in the actual, adverse open exclusive and continuous possession of said Aly Hatfield from the dates of the grants therefor until his death, as affiant is informed, except as to a part of the 330 acres which he conveyed to his daughter Martha who intermarried with A. M. Toler and upon the death of said Aly Hatfield, as affiant is informed, her father Joseph Hatfield entered into such possession of said lands and so continued to hold the same until his death on the 9th day of March 1893 when said lands descended to affiant

who together with her mother Sarah D. Hatfield has continued in such possession to this day.

That neither said Henry C. King nor any person under whom he claims said Morris grant ever had possession of said lands or any part thereof or of any part of said Morris grant.

Affiant further says that said tracts of 48, 72, and 140 acres of land, from the date of the deeds therefor were in the actual open exclusive and continuous possession of affiant's father Joseph Hatfield until his death and that they have been held in such possession by affiant and her mother since the death of affiant's father.

Affiant further says that her father in his lifetime owned certain other lands derived from his father Aly Hatfield situate on the left fork of Ben creek and its waters which adjoin said tracts of 450 and 330 acres and the whole constituted the home and farm of her father Joseph Hatfield; that portions of said 450 and 330 acres have been cleared enclosed and cultivated and oc-upied, to affiant's certain knowledge, for more than twenty years last past; that no part of said tracts of 450, 330 48, 72 and 140 acres or of the other lands owned by affiant's father which de-cended to affiant has at any time within the memory of affiant been in the adverse possession of any person as against her father Joseph Hatfield or against her and her mother Sarah D. Hatfield.

Affiant further says that she was born and reared upon the said land and has lived thereon during the thirty-one years of her life except four year- and during that period her father and mother and tenants lived upon and cultivated said lands.

NANCY C. BROWNING.

Taken subscribed and *and* sworn to before me this September 13th 1901.

M. A. HATFIELD, *Justice.*

STATE OF WEST VIRGINIA, *Mingo County,* } *To wit:*

I, James Damron, clerk of the county court, which is a court of record in and for the county and State aforesaid, do certify that M. A. Hatfield, whose name is signed to the

foregoing writing was on the 13th day of September, 1901 a justice of the peace, (duly qualified) in and for the county and State last mentioned, and that he is authorized under the laws of my said State to administer an oath. I further certify that I am acquainted with his signature and that his signature as signed to the foregoing writing is genuine.

Given under my hand and official seal this the 16th day of September, 1901.

[Seal County Court, Mingo County, West Virginia.]

JAMES DAMRON, *Clerk.*

EXHIBIT No. 7.

STATE OF WEST VIRGINIA, } *To wit:*
Mingo County, }

Sarah D. Hatfield, being first duly sworn, says that she is the widow of Joseph Hatfield, deceased, and resides on Ben creek, on the lands of which Joseph Hatfield died, *siczed*, part of which were owned by Aly Hatfield, the father of Joseph Hatfield, in his lifetime.

That she has lived at the Joseph Hatfield home, which is located on the lands aforesaid, for 32 years; that her home consists of a large two-story dwelling-house, two barns, quite a number of outbuildings, and a large orchard; that the dwelling-house is surrounded by an orchard and meadows, with farming lands above and below, which were in a state of cultivation long before affiant married the said Joseph Hatfield, which occurred on the 13th of April, 1869.

Affiant further says that her daughter, Nancy C. Browning, who first married one Rutherford, was agin married to Albert Browning, on the 25th day of December, 1895.

Affiant further says that she is the same Sarah D. Hatfield, and her daughter the same Nancy C. Rutherford mentioned in the declaration in ejectment hereto attached, which was served upon her some time in the year 1895, and also mentioned in the restraining order hereto attached, which was likewise served upon her in the year 1895.

Affiant further says that about the time the declaration in ejectment and restraining order were served upon her, there was considerable interest stirred up among the citizens owning land, and that she had noticed a statement in the newspaper published at Logan Court-house, with reference to the citizens employing lawyers to defend the titles to their lands. About that time H. K. Shumate, a lawyer then residing at Logan court-house, whom she had known for a number of years and who had been her counsel in all the litigation she had had, and who had been the attorney for her husband, came to her house with a man who was introduced to her as M. F. Stiles. They remained over night at her house, and while there, affiant mentioned to Mr. Shumate the fact

that suit had been brought by Henry C. King for her land, and requested him to attend to her interest in the case. He said he could not do so, as he was employed by King, but that he was of opinion it would not be necessary for her to make any defence, that they would not disturb a lone widow and orphans.

About two months later the said Shumate and Stiles returned to her house and again stayed all night. During the evening the said Stiles sought and obtained a conversation with her in reference to what had occurred between Mr. Shumate and her when they were at her house before. Mr. Stiles told affiant that they (meaning King and his counsel) did not take anything from widows and orphans, and that they would like to see her protected in the ownership of her lands, and stated that if affiant would allow them to attend to her interest in the suit brought by King against her, that she should not have to pay any lawyer fee or costs. That they would pay all expenses for her and that she should not be out anything, and if it became necessary for her to go any place to aid them, that they would pay all her expenses, and in the event King finally recovered her land, that they (meaning King and his counsel) would reconvey to her her lands, and that she should also have the right to go on and move any timber from her lands that she desired to.

Mr. Stiles further said that it would be much better and easier for her to make this arrangement with him than it would be for her to go to the expense of employing a lawyer to defend her title, and that they (meaning King and his counsel) could afford to have her title defended for her, pay all the expenses connected therewith, and reconvey the lands to her, because it would save them a great deal of expense and probably save Mr. King his whole tract of land and that they (meaning King and his counsel) had certain lawyers employed who would take cases for the citizens sued by Mr. King, and work to the interest of King in such cases, and that they could have one of such lawyers take care of her interest in the suit. She told Mr. Stiles that she did not know what lawyer she could get. That Mr. Shumate, her lawyer, represented them; to which Mr. Stiles replied that Major H. C Flesher, of Welch, W. Va., was doing business for them (meaning King and his counsel), and that he could get Flesher to attend to her case.

Affiant further says that she had been in litigation and

was caused therein to pay out considerable money over her lands in another suit to settle up her husband's estate, which had cost all the money she had, and had been able to make, and that she felt that she was unable to employ counsel to defend her in the King suit, and not knowing that it was wrong, or would put her in an improper position, but feeling that she had the right to contract as she chose with reference to the defence of her suit and also acting under the advice of Mr. Shumate, and believing that Mr. Stiles was dealing fairly with her, she consented to the arrangement proposed by Stiles, and that it was further and finally agreed on that occasion that the agreements proposed by Stiles should be put in the shape of a contract in writing, and also that they would execute and deliver to her a contract in writing showing that her land was to be reconveyed to her by Mr. King in the event he recovered the same in the suit. Mr. Stiles told her, however, that they did not have time to draw the writing at that time, but that Mr. Shumate would prepare the same and deliver it to her.

Some time thereafter, a man came to her on the train on the Norfolk & Western railroad from Huntington, and told her that he was H. C. Flesher, of Welch, and that he had been employed to look after her interest in the suit brought against her and others by Henry C. King. The next time she saw said Flesher was probably a month later, when, pursuant to arrangements made with her by said Stiles, she came to Wharncliffe to meet Mr. Flesher and went with him to Gray, a station on the Norfolk & Western railroad, about five or six miles west of her railroad station, Wharncliffe. Said Flesher stated that he wanted her to sign a writing with him, which she did, and which is hereto attached.

She never saw or read the agreed statement of facts that she has been told was filed by the said Flesher in the Federal court at Parkersburg, which she is told said Flesher signed as counsel for William Claypool, her daughter Nancy, and her.

Affiant further says that the arrangement she made with said Stiles, which has been hereinbefore set out, was with reference to the action of ejectment styled Henry C. King against Simon S. Altizer and others, and the suit in equity ancillary thereto, to enjoin her and others from removing timber. That she did not contemplate any other suit or

know that any other suit would be brought against her by the said Henry C. King.

Affiant further says that in the early part of February, 1901, she thinks about the 10th or 12th, she received a letter from Henry C. Flesher, for her to come to Welch at once. That she was sick and could not go for a few days, but about a week later she did go, and for the first time she was then told by the said Henry C. Flesher that a suit had been brought in the Federal court before Judge Jackson by Henry C. King against her and her daughter Nancy, and that the case had been decided against them and that they had appealed the case to the Supreme Court of the United States. This was the first information of any kind that affiant ever had of this suit or of its decision—that no summons or other process therein was served upon her.

Affiant then requested to know if she could go on and cut timber, but was told by said Flesher that she must not do so. She then requested said Flesher to have a deed for her land delivered to her from Mr. King, according to the agreement Stiles had made with her, to which said Flesher replied that Mr. Wilder, the agent, or Mr. Stiles, the attorney, for King, would be at Welch in a few days and he would then have a proper writing prepared giving her back her land, and send it to her,—that they were straight in their dealings with her in reference to these matters, and would carry out the arrangement fully. Affiant says, however, that no such paper has ever been delivered to her, and that it now seems that she has been duped by them and in her ignorance of the law, as well as her desire to get out of litigation, they have taken advantage of her to her prejudice, and even to the loss of her home and all she has.

Affiant further says that her daughter Nancy C. Browning, so far as she knows, never at any time made a contract with the said King or his representatives in relation to her land or the suit against the same, and that this affiant had no authority to act for her said daughter, and that she did not act or attempt to act for her in the defence of her lands, but that the agreement as hereinbefore set out was not known to nor participated in by her daughter.

SARAH D. HATFIELD.

Taken, subscribed and sworn to before me, as witness my hand and seal this 30th day of September, 1901.

[Seal Circuit Court, Mingo County, West Virginia.]

CHAS. H. BRONSON,
Clerk Circuit Court, Mingo County, West Virginia.

Witness:
C. H. BRONSON.

ETHEL COLE,
Stenographer and Typewriter.

In the Circuit Court of the United States for the District of West Virginia, Fourth Judicial Circuit.

Henry C. King, a citizen and resident of the State of New York, plaintiff, complains of Simon S. Altizer, Aaron Altizer, J. Altizer, Joseph Altizer, J. C. Alderson, W. W. Adams, H. C. Avis, John R. Browning, Chapman Browning, Joseph Browning, Aaron Browning, Levi Browning, Russell Browning, Albert Browning, Loran Browning, Jesse L. Browning, Milton Browning, William C. (commonly called Chapman) Browning, Cloyd Bailey, King [illegible]am Blankenship, Henry Blankenship, Richard B. Blankenship, J. H. Blankenship, J. M. Blankenship, U. B. Buskirk, Curtis Ballard, Eli Blankenship, Joseph H. Blankenship, Larkin Cline, G. W. Cline, William Cline, Moses C. Cline, Anthony Cline, Abe Cline, Harrison Cline, L. D. Chambers, Margaret L. Chambers, Martha J. Chambers, James L. Chambers, Sidney Chambers, William Claypool, P. B. Dobbins, trustee; John Davis, Sherman Davis, Charles Elkins, Uriah W. Elkins, Crockett Allison, Leander Ellis, Scott Ellis, J. B. Ellison, A. J. Ellis, O. F. Ferrell, L. B. Godfrey, Joel Gibson, Anderson Grimmett, J. N. Gibson, Joseph Hinchman, L. D. Hinchman, George Hinchman, Sarah D. Hatfield, Alexander Hatfield, F. M. Harless, Ward Hatfield, W. E. Justice, C. E. Justice, W. A. Johnson, R. L. Joyce, W. T. Kenneda, John Kenneda, F. M. Kenneda, S. P. Kelly, Lewis J. Lester, Pleasant Lester, Bruce McDonald, Wayne McDonald, William W. McDonald, Millard McDonald, G. R. McDonald, Alexander McClintock, John McClintock, George Mounts, Elijah Mounts, M. B. Mullins, Joseph Murphy, M. J. Morgan, James A. Nighbert,

Oliver Perry, Jasper Perry, J. F. Paul, J. A. Peck, William Riffe, William Riffe, Jr., Nancy C. Rutherford, Lewis Riffe, Leander Riffe, L. D. Riffe, E. H. Simpkins, Joseph Simpkins, J. S. Stafford, Ralph Steel, Harrison Steel, J. A. Sheppard, Samuel Stafford, W. G. Sansom, Martha Steel, A. M. Toler, J. C. B. Toler, A. H. Toler, J. M P. Toler, J. C. Toler, Mary B. Toler, Lara Z. Toler, Nettie Toler, J. E. Toler, Alexander Trent, F. Marion Trent, A. A. Vance, Charles Walker, Preston Walker, J. E. Chilton, trustee; citizens and residents of said State of West Virginia, and Grayton Mining Company, Grayton Water Works and Improvement Company, Forest Coal Company and Spruce Coal and Lumber Company, corporations organized under the laws of said State of West Virginia, and Bowman Lumber Company, a foreign corporation doing business in said State of West Virginia, defendants, of a plea of trespass, to wit: that heretofore, to wit: on the 1st day of January, A. D. 1894, the plaintiff was possessed in fee of a certain tract or parcel of land in the States of Virginia, West Virginia and Kentucky, being a tract of land granted to Robert Morris by the Commonwealth of Virginia, by patent dated June 23d, A. D. 1795, and in said patent described as follows:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of 480,000 acres, and of a survey of 320,000 acres made for said Nicholas and Jacob Kunney, and with a line of the latter S. 33 degrees W. 6,720 poles, crossing a dividing ridge and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the northwest bank of Knox creek and thence leaving said survey W. 3,840 poles, crossing said creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peter's creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox creek; thence N. 8,000 poles, crossing Knox creek at about four miles, Sandy river at twelve miles, at the mouth of Turkey creek and up said creek and the N. W. forks of same, crossing Buffalo creek, Pigeon creek, and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river and about 20 poles below the

mouth of Gilbert's creek, and thence N. 10 degrees E. 4,450 poles, crossing Guyandotte river, several small branches and some ridges to pointers; thence E. 6,620 poles, crossing Guyandotte river and several branches thereof, to three sugar trees and a buckeye, by a small branch of the same, being the N. W. corner of a survey of said Nicholas of 480,000 acres, and thence with same S. 6,800 poles, crossing Huff's or Cain creek, to the beginning.

And that plaintiff being so possessed of said land, as aforesaid, defendants afterwards, to wit: on the 1st day of April, A. D. 1894, entered upon that portion thereof lying in the said State of West Virginia, and unlawfully withhold the possession of same from plaintiff, to the damage of plaintiff in the sum of fifty thousand dollars ($50,000.00). And plaintiff says, that the value of the matter in dispute herein exceeds the sum of five thousand dollars ($5,000.00), exclusive of costs.

Wherefore plaintiff brings this suit.

In the Circuit Court of the United States for the District of West Virginia, Fourth Judicial Circuit.

To Simon S. Altizer, Aaron Altizer, J. Altizer, Joseph Altizer, J. C. Alderson, W. W. Adams, H. C. Avis, John R. Browning, Chapman Browning, Joseph Browning, Aaron Browning, Levi Browning, Russell Browning, Albert Browning, Loran Browning, Jesse L. Browning, Milton Browning, William C. (commonly called Chapman) Browning, Cloyd Bailey, King Hiram Blankenship, Henry Blankenship, Richard B. Blankenship, J. H. Blankenship, J. M. Blankenship, U. B. Buskirk, Curtis Ballard, Eli Blankenship, Joseph H. Blankenship, Larkin Cline, G. W. Cline, William Cline, Moses C. Cline, Anthony Cline, Abe Cline, Harrison Cline, L. D. Chambers, Margaret L. Chambers, Martha J. Chambers, James L. Chambers, Sidney Chambers, William Claypool, P. B. Dobbins, trustee; John Davis, Sherman Davis, Charles Elkins, Uriah W. Elkins, Crockett Allison, Leander Ellis, Scott Ellis, J. B. Ellison, A. J. Ellis, O. F. Ferrell, L. B. Godfrey, Joel Gibson, Anderson Grimmett, J. N. Gibson, Joseph Hinchman, L. D. Hinchman, George Hinchman, Sarah D. Hatfield, Alexander Hatfield, F. M. Harless, Ward Hatfield, W. E.

Justice, C. E. Justice, W. A. Johnson, R. L. Joyce, W. T. Kenneda, John Kenneda, F. M. Kenneda, S. P. Kelly, Lewis J. Lester, Pleasant Lester, Bruce McDonald, Wayne McDonald, William W. McDonald, Millard McDonald, G. R. McDonald, Alexander McClintock, John McClintock, George Mounts, Elijah Mounts, M. B. Mullins, Joseph Murphy, M. J. Morgan, James A. Nighbert, Oliver Perry, Jasper Perry, J. F. Paul, J. A. Peck, William Riffe, William Riffe, Jr., Nancy C. Rutherford, Lewis Riffe, Leander Riffe, L. D. Riffe, E. H. Simpkins, Joseph Simpkins, J. S. Stafford, Ralph Steel, Harrison Steel, J. A. Sheppard, Samuel Stafford, W. G. Sansom, Martha Steel, A. M. Toler, J. C. B. Toler, A. H. Toler, J. M. P. Toler, J. C. Toler, Mary B. Toler, Lara Z. Toler, Nettie Toler, J. E. Toler, Alexander Trent, F. Marion Trent, A. A. Vance, Charles Walker, Preston Walker, J. E. Chilton, trustee; citizens and residents of said State of West Virginia, and Grayton Mining Company, Grayton Water Works and Improvement Company, Forest Coal Company and Spruce Coal and Lumber Company, corporations organized under the laws of said State of West Virginia, and Bowman Lumber Company, a foreign corporation doing business in said State of West Virginia, defendants:

You are hereby notified that the foregoing declaration in ejectment will be filed in the office of the clerk of said circuit court, at Charleston, West Virginia, on the first Monday of March, A. D. 1895, and if you fail to appear and plead thereto, judgment will be given against you.

HENRY C. KING,
By MAYNARD F. STILES,
His Attorney.

[Endorsed:] In the circuit court of the United States for the district of West Virginia, fourth judicial circuit. Henry C. King, plaintiff, *vs.* Simon S. Altizer *et als.*, defendants. Declaration. Maynard F. Stiles, Dotson, W. Va., attorney for plaintiff.

In the Circuit Court of the United States for the District of West Virginia, at Chambers.

HENRY C. KING, Complainant,
vs.
H. S. WHITE, ALBERT KENNADA, WILLIAM Kennada, John White, J. M. Vance, Johnson Trent, Keenan Sansom, John Long, Jefferson Adkins, Wallace H. McDonald, Joseph B. Browning, J. S. Steele, Perry Steele, Ralph Steele, John Rutherford, Elliot Rutherford, Nancy C. Rutherford, Sarah D. Hatfield, C. W. Osborn, and —— Simpkins, Defendants. } In Equity.

This day the complainant, Henry C. King, presented his bill to the undersigned, one of the judges of this court, praying amongst other things for an injunction to restrain and inhibit the defendants from cutting and removing timber from off the land of complainant as set out and described in the bill. Upon consideration whereof it is ordered that the bill in this cause be filed, and that process issue thereon.

It is further ordered that the defendants, and each and every one of them, be restrained and inhibited from cutting and removing any timber from off of the land of complainant, as described and set out in this bill, or in anywise committing waste thereon.

No bond is required at this time; and the motion and application for a permanent injunction is set down for hearing on the 23d day of this month at Charleston, West Virginia, and a copy of this order served upon each of the defendants shall be deemed and held as sufficient notice of the motion for this injunction.

John Rose is hereby appointed to serve a copy of this order upon each of the defendants.

(Endorsed:) Enter. Jackson, judge. March 14, '95.

A true copy from the record.

{ Seal Circuit Court United States, District of West Virginia, Charleston, West Va. }

Teste: L. B. DELLICHER,
Clerk Circuit Court U. S., D. W. Va.

A copy.
Teste. L. B. DELLICHER, *Clerk.*

At a circuit court of the United States for the district of West Virginia, continued and held at Charleston, in said district, on Saturday, the 23rd day of March, A. D. 1895, the following order was made and entered of record:

HENRY C. KING, Complainant,
vs.
H. S. WHITE ET ALS., Defendants. } In Equity.

This cause came on to be heard this day upon application of complainant for injunction and upon the rule awarded herein on the 14th day of March, 1895, and it appearing to the court that said rule had not been served upon said defendants it is by the court ordered counsel for complainant and defendants consenting that the restraining order awarded herein on the 14th day of March, 1895, be continued in force till the further order of this court, and that said defendants show cause, if any they can, before this court at Charleston, on the 23d day of May, 1895, why said restraining order and injunction should not be made permanent.

And it is further ordered that a copy of this order served upon said defendants in conjunction with said order of March 14th shall be due service hereof, and John Rose is specially designated and appointed to make such service.

A true copy from the record.

{ Seal Circuit Court United States, District West Virginia, Charleston, West Va. }

Attest: L. B. DELLICHER,
Clerk Circuit Court U. S., D. W. Va.

A copy.
Teste: L. B. DELLICHER, *Clerk.*

In the Circuit Court of the U. S. for the District of West Virginia, and now pending at Parkersburg, West Va.

H. C. KING, Plaintiff,
vs.
ALTIZER ET AL., Defendants. } In Ejectment.

Whereas, the undersigned did in May, 1895, employ Henry C. Flesher as my attorney in the above-entitled suit;

And whereas, I did in such employment authorize my said attorney to represent me in the stipulation signed by him in

said cause and dated about the 15 day of June 1895; and whereas also, I did authorize my said attorney to do any legal act in and about my defence in said suit and that would end the same,

I hereby confirm the authority of my said attorney, and also of any other attorney, that may be selected by said Flesher to appear with him in said suit and defend the same for me, whenever the same shall be tried, and to do any act therein that may seem to them best to do in the premises, and I hereby ratify and confirm any and all acts that my said attorney or the one selected by him, and who shall appear in said suit.

I have no privity with any other defendant in said suit, and the other def'ts therein took no interest in my affairs or in connection with my defence in said suit until *very* recently, and I do not think that their motives are entirely disinterested in my behalf, at this time,

Witness my hand this 1st day of July 1895.

SARAH D. HATFIELD.

Witnesses:

J. W. PETERS.
Mrs. J. W. PETERS.
Mrs. E. M. HAMPTON.
W. H. FLESHER.

EXHIBIT No. 8.

STATE OF WEST VIRGINIA, *County of Logan,* } *To wit:*

W. A. Lee, being first duly sworn, says, upon oath, that he is deputy for S. S. Altizer, clerk of the county court of said county; that the record of the deed from Aly Hatfield and Anna, his wife, to Martha Toler, bearing date the 14th of March, 1861, has been mutilated in part, and that the certified copy of said deed hereto attached is all of the record of said deed now remaining in said clerk's office, and that the record of the other portion of said deed has been mutilated and destroyed.

W. A. LEE.

Taken, subscribed and sworn to before the undersigned authority in and for said county, as witness his hand and official seal this the 4th day of October, 1901.

[Seal of W. A. Brazie, Notary Public, Logan County, W. Va.]

W. A. BRAZIE,
Notary Public.

This deed made the 14 of March in the year of 1861 between Aly Hatfield and Anna Hatfield *and Anna Hatfield* his wife, of the first part and Martha Toler and her heirs of the second part.

Witnesseth: That in consideration of the sum of one dollar in hand paid by the said Martha Toler, the said Aly Hatfield & Anna Hatfield his wife, doth grant unto the said Martha Toler her & heirs a certain tract or parcel of land lying & being in the county of Logan containing 200 acres more more or less & situated on Ben creek, water of Sandy

Beginning on a poplar & lynn on the west side of the creek, crossing the creek, thence running up the point to the top of the ridge
to two black oaks, thence down the creek about one mile to a

black oak on the ridge, then with the creek and then down the creek
the lower corner, to two lynns, thence up the creek on the other
to the beginning, the said Aly Hatfield and Anna Hatfield
right title, interest & right they have and the said
part covenant all the party of the second part.
warrant specially the property hereby conveyed.
following signatures and seals the day and

ALY HATFIELD. [SEAL.]
ANNA HATFIELD. [SEAL.]

TY OF LOGAN, *To wit*:

F. Varney a justice of the peace in and for the
aforesaid, State of Virginia do certify that Aly
signed the writing hereto an-exed bearing
of March 1861 hath acknowledged the same before me
Given under my hand this the 14th day of

SAMUEL F. VARNEY, *J. P.*

In the County of Logan.

We Samuel F. Varney & Efram Hatfield justices of the peace in and for the county of Logan do certify that Anna Hatfield, wife of Aly Hatfield whose names *are* signed to the writing hereto an-exed Jan. the 14th day of March 1861 personally appeared before me in the county aforesaid, and being examined by me privily and apart from her husband and having the writing fully explained to her, she the said Annie Hatfield acknowledged the same writing to be her act and deed & that she has willingly executed the same and does not wish to retract it.

Given under *h*our hands the 14th March 1861.

SAMUEL F. VARNEY, *J. P.*
EFRAIM HATFIELD, *J. P.*

In Logan county court clerk's office March 18th 1861 this deed was admitted to record.

Teste: WM. STRATON, *Clk.*

WEST VIRGINIA:

In Logan County Court Clerk's Office.

I, W. A. Lee deputy for S. S. Altizer clerk of the county court of said county, do certify that the foregoing is a true copy as fully as the same appears of record in said office.

Given under my hand and the seal of said court this 27th day of September 1901.

[Seal County Court, Logan County, West Virginia.]

W. A. LEE, *Deputy*,
For S. S. ALTIZER, *Clerk*.

EXHIBIT No. 10.

STATE OF WEST VIRGINIA, *Mingo County,* } *To wit:*

A. M. Toler, being first duly sworn, upon his oath states that he resides on Ben creek, in said county of Mingo, one mile below the residence of Sarah D. Hatfield, and that he has resided there for 43 years last past.

Affiant further says that he is acquainted with V. A. Wilder, the agent, and M. F. Stiles, the attorney, for Henry C. King, and is also acquainted with H. K. Shumate, who is likewise attorney for Henry C. King in his attempt to establish title to what is known as the Morris 500,000-acre tract of land, and that he has known the first two named since about the year 1894, and has known the said H. K. Shumate all his life.

Affiant further says that the said Shumate is well acquainted with the Aly Hatfield and Joe Hatfield lands on Ben creek now owned by Sarah D. Hatfield and Nancy C. Browning. That he is not only familiar with the same in a general way, but is acquainted therewith as a surveyor and has a map thereof, and that he has also visited the homestead of the said Joseph Hatfield, now occupied by Sarah D. Hatfield, his widow, a great number of times, to affiant's certain knowledge, and that the said Shumate was, at and before the 8th day of October, 1898, well aware that much of the said lands owned by the said Sarah D. Hatfiled and Nancy C. Browning was, and had been for a great number of years, cleared, fenced and in a state of cultivation, and that the mansion house of the said Joseph Hatfield and Sarah D. Hatfield is located thereon. That the said Shumate has pointed out a number of the corners to the said several tracts of land which composed the Hatfield body.

Affiant further says that during the years 1896 and 1897, he frequently saw V. A. Wilder, agent, and M. F. Stiles, attorney, for said King, passing up and down the said Ben creek and in so doing that they passed through the Joseph Hatfield farm, and by the mansion house located thereon. That they, the said Wilder and Stiles, were acquainted with

the several persons living on that creek, or, at least, knew where they lived, and especially were acquainted with Sarah D. Hatfield and her home.

Affiant further says that he was, in the year 1896, at the house of Sarah D. Hatfield on one occasion, when he found the said Wilder and Stiles stopping with Mrs. Hatfield, and that he left the house very late in the evening, leaving the said Wilder and Stiles at the house of Mrs. Hatfield, and that they came away therefrom the next morning.

Rev. A. M. Toler.

Taken, subscribed and sworn to, as witness my hand and seal this the 30th day of September, 1901.

[Seal County Court, Mingo County, West Virginia.]

Jas. Damron,
Clk Mingo County Court.

EXHIBIT No. 11.

STATE OF WEST VIRGINIA, *Mingo County,* } *To wit:*

J. M. Toler, being duly sworn, says that he lives on Ben creek in said county, at a distance of about one mile from the residence of Sarah D. Hatfield. That he knows V. A. Wilder agent, and M. F. Stiles, attorney, for Henry C. King, and has been acquainted with them since about the year 1894. That said Wilder and Stiles, during the years 1895, 1896, and 1897, frequently passed up and down Ben creek along the public road, which is located through the Joseph Hatfield farm now occupied by Sarah D. Hatfield and her daughter, Nancy C. Browning, and that that portion of the farm located along the public road on each side thereof, is in a state of cultivation, and has been, to affiant's knowledge, for more than thirty years. That during the time last mentioned, affiant has frequently been at the house of Sarah D. Hatfield and has heard her, and those about her home, speak of the said Wilder and Stiles stopping with them over night and visiting them.

Affiant further says that the home of Sarah D. Hatfield consists of a large two-story farm-house, with a kitchen and dining-room in a separate building; a very large orchard; two large barns with corn-cribs and other outbuildings, surrounded by a meadow, and with rolling hill lands above and below on which various crops are raised for the support of the family. That this place was known and recognized by the citizens throughout the surrounding country for a great number of years, and to affiant's knowledge for more than thirty years, as one of the most attractive farms in the county of Logan, from which the present county of Mingo was formed, and that the farm aforesaid was and is such as to attract attention and cause inquiry as to its occupant and owner.

Affiant further says that H. K. Shumate, another attorney for the said Henry C. King, resided at Logan Court-house a number of years before the formation of Mingo county, in the year 1895, and since that time has lived and yet lives

at the county-seat of Mingo county, during which time he, the said Shumate, has spent much time on Ben creek and at the home of Joseph Hatfield and after his death, with his widow, and that the said Shumate purchased the minerals underlying the Hatfield land as agent for Henry R. Phillips, or some one of the trustees acting with him, and was, at and before the 8th day of October, 1898, thoroughly familiar with the Hatfield lands and their location.

J. M. TOLER.

Taken, subscribed and sworn to, as witness my hand and seal this the 30th day of September, 1901.

[Seal County Court, Mingo County, West Virginia.]

JAS. DAMRON,
Clk Mingo County Court.

EXHIBIT No. 12.

STATE OF WEST VIRGINIA, } *To wit:*
County of Mingo, }

Ferrell Hatfield being duly sworn upon his oath says that he is sixty-eight years old and resides on the left fork of Ben creek near where he was born and reared; that he was well acquainted with his uncle Aly Hatfield in his lifetime; that he is well acquainted with the lands of the said Aly situate on the left fork of Ben creek formerly in Logan but now Mingo county West Virginia and particularly with those portions of said lands now occupied and claimed by Sarah D. Hatfield and Nancy C. Browning formerly Hatfield; that he is also acquainted with the location of the three tracts of 48, 72 and 140 acres conveyed to Joseph Hatfield son of said Aly by the commissioner of school lands of Logan county that said tracts and the two surveys of 450 and 330 acres form one contiguous boundary. That a portion of the said 330 acres was conveyed by the said Aly to his daughter Martha Toler who occupied the same from about 1865 till her death about 1891 and her children and husband have occupied and resided thereon since her death till the present time. That said Aly resided on said lands from 1863 until his death in 1870 clearing enclosing and cultivating portions thereof including portions of the 450 and 330 acre tracts and upon his death the unsold portions were occupied and resided upon by his son Joseph until his death in 1893 who cleared and enclosed other portions thereof and his widow Sarah D and daughter Nancy C. have since continued to occupy and enclose portions of the said 450 and 330 acre tracts, that portions of said 450 and 330 acre tracts have been enclosed and occupied continuously under said patents for more than thirty years.

FERREL HATFIELD.

Taken subscribed and sworn to before me this September 13th, 1901.

M. A. HATFIELD, *Justice.*

STATE OF WEST VIRGINIA, *County of Mingo,* } *To wit:*

I, James Damron, clerk of the county court, which is a court of record in and for the county and State aforesaid, do certify that M. A. Hatfield whose name is signed to the foregoing writing was on the 13th day of September, 1901, a justice of the peace (duly qualified) in and for the county and State last mentioned, and that he is authorized under the laws of my said State, to administer an oath. I further certify that I am acquainted with his signature and that his signature as signed to the foregoing writing is genuine.

Given under my hand and official seal this 16th day of Sept., 1901.

[Seal County Court, Mingo County, West Virginia.]

JAMES DAMRON, *Clerk.*

EXHIBIT No. 13.

STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

Claude L. Gaujot, being first duly sworn, says, that he is thirty years of age and resides at Williamson, Mingo county, West Virginia, that he is by profession and occupation, a civil and mining engineer and land surveyor; that he was acquainted with the late Joseph Hatfield in his lifetime, and is acquainted with his widow, Sarah D. Hatfield, and his daughter, Nancy C. Browning; that on or about the 15th day of October, 1889, the said Joseph Hatfield and Sarah D. Hatfield, his wife, made a deed purporting to convey to one Henry R. Phillips, trustee, all the coal, gases, salt water, oil and minerals of every description in, upon and under a certain tract of land, situate on the left fork of Ben creek, then in Logan county, but now in Mingo county, West Virginia, and therein described by metes and bounds. Said deed was recorded in the clerk's office of the county court of said Logan county, on the 6th day of August, 1890, in Deed Book Big P, at page 6. A copy of said deed is hereto attached as part hereof.

That affiant, with the assistance of his brother, J. E. Gaujot, surveyed the boundary of land so described in said deed, and ascertained that said metes and bounds embrace only 1,342.43 acres and not 1,700 acres as mentioned in said deed. That said deed embraces the whole of a tract described as containing 450 acres and a part of a 330 acres, granted by the Commonwealth of Virginia to Aly Hatfield on the first day of February, 1859. Said metes and bounds also embrace the tract of 140 acres granted to said Joseph Hatfield by L. D. Chambers, commissioner of school lands of said Logan county on the 14th day of March, 1889. Said metes and bounds also embrace certain other surveys. That affiant made a plat of such surveying, showing the location of each tract so embraced in said metes and bounds, and a correct tracing of the said plat or map is hereto attached as part of this affidavit.

That said surveying was done in 1894, and at that time,

several portions of the 450-acre tract and portions of the part of the 330-acre tract were then embraced in said deed, were then cleared and enclosed, and, from appearances, affiant would judge, had been cleared and enclosed a number of years before; and said lands were at that time in the actual occupation of the widow Sarah D. Hatfield and her daughter, Nancy; that all the lands described in said deed from said Joseph Hatfield and wife, Sarah D., to said Henry R. Phillips, trustee, form one contiguous boundary, and they have been resided upon and portions thereof cleared, enclosed and cultivated by the said Sarah D. Hatfield and her daughter since the time of said surveying in 1894.

CLAUDE L. GAUJOT.

Subscribed and sworn to before me in my said county this the 26th day of September, 1901.

C. W. CAMPBELL,
Notary Public, Cabell County, West Virginia.

STATE OF WEST VIRGINIA:

CABELL COUNTY COURT CLERK'S OFFICE.

I, F. L. Doolittle, clerk of the county court of Cabell county, in the State aforesaid, do hereby certify that C. W. Campbell, whose name is signed to the annexed certificate, bearing date the 26th day of September, 1901, is a notary public in and for said county, duly commissioned and qualified, and is authorized by the laws of this State to take the acknowledgment of deeds and other writings, to administer oaths, and to take affidavits; and that the name thereto subscribed is, I verily believe, his genuine signature.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at the court-house of said county, this 28th day of September, 1901.

[Seal County Court, Cabell County, West Virginia]

F. L. DOOLITTLE,
Clerk Cabell County Court.

This deed, made this 15th day of October, A. D. 1889, between Joseph Hatfield and Sarah Hatfield his wife parties of the first part, and Henry R. Phillips, trustee and assignee of R. S. Lowery's personal representative, party of the second part:

Witnesseth, that for and in consideration of the sum of eighteen hundred dollars paid in hand, the receipt whereof is hereby acknowledged, the said parties of the first part do grant unto the party of the second part, with covenants of general warranty, the following-described property, to wit: All the coal, gases, salt water, oil and minerals of every description, in, upon and under my farm or tract of land, situated in the county of Logan State of West Virginia on the waters of left fork of Ben creek containing one thousand and seven hundred acres, and bounded as follows: Beginning at two beeches on the bank of the left-hand fork of Ben creek near an old mill and corner to a survey of 79 acres made for Thos. E. & Jno. R. Browning and with one line of the same S. 7½° W. 134 poles to a beech and white oak (both gone) corner to a survey of 66 acres made for Wm. Smith, thence with the same S. 87° W. 7 poles to a lynn dogwood and birch (lynn and dogwood gone), N. 57° W. 100 poles to a white oak on a hillside, N. 81° W. 260 poles to a maple and bunch of lynns, S. 85° W. 84 poles to a chestnut oak, S. 46° W. 56 poles to a large black walnut (cut down), S. 6½° E. 16 poles to a bunch of lynns S. 65½° E. 16 poles to a chestnut and two dogwoods in a drain, N. 15° W. 10 poles to a poplar, dogwood and sugar, N. 68° E. 56 poles to a bunch of lynns, S. 74° E. 40 poles to a bunch of lynns, on a point, S. 6° E. 66 poles to a hickory and dogwood S. 31½° E. 22 poles to a birch and white walnut (both down) corner to a survey of 72 acres made by Aly Hatfield and with the same, N. 87° W. 68 poles to a white oak, S. 46½° W. 38 poles to two lynns and a black walnut (one lynn gone and black walnut down), at the foot of the mountain where road crosses to Beech creek, S. 84° E. 24 poles to a maple and beech on a point, S. 21° E. 14 poles to a poplar near a branch, N. 56° E. 20 poles to a birch on the road fork, S. 14° E. 176 poles to a poplar on the point, S. 44½° E. 20 poles to two lynns on the right-hand fork, N. 35° E. 18 poles to a poplar on a point, N. 80° E. 18 poles to a beech, N. 10° W. 28 poles to an ironwood and lynn at the forks of said fork, N. 41° E. 30 poles to a buckeye on bank of said fork (cut down), N. 15° W. 5

poles to a beech (cut down) at mouth of Alum fork and corner to said Smith survey and with one line of same, S. 64½° E. 30 poles to two birches (gone) corner to Wm. Mullin's 420-acre survey and with same, S. 37° W. 100 poles to two rocks and chestnut oak on a high point, S. 10° E. 112 poles to a hickory and locust on the ridge at the head of Alum creek on a line of said Mullin's survey and leaving the same and down the point above Chestnut Log hollow, between said Hatfield and A. M. Toler, N. 85° E. 148 poles to a bunch of chestnuts on a point, S. 40° E. 70 poles to a chestnut oak (not found) S. 53° E. 38 poles to a maple, S. 81° E. 42 poles to a beech S. 64° E. 10 poles to a large sycamore in the bottom just above Chestnut Log hollow, due east 147 poles to a hickory and black oak on the ridge between the two forks of Ben creek, N. 69° E. 24 poles to a bunch of small chestnuts, N. 2° W. 58 poles to a chestnut oak N. 45° W. 38 poles to a high knob, N. 27° E. 116 poles to a stake on the line of W. Alderson's 2,740-acre survey and with said line N. 10½° W. 136 poles to a chestnut, corner to said survey and leaving same, N. 66° W. 20 poles to a water oak, N. 33° W. 56 poles to two hickories on the side of a knob corner to said Hatfield's school-land survey, N. 30° E. 66 poles to a stake on Alderson's line and with it, N. 5° W. 292 poles to a blazed black oak on the line of said school-land survey and with it, N. 51° W. 20 poles to a chestnut oak on top of the ridge, S. 34° W. 64 poles to a poplar on a branch, S. 13° W. 24 poles to a beech, S. 52° W. 18 poles to a gum in a hollow, and leaving said school-land survey, S. 18° W. 40 poles to a buckeye and cucumber, S. 17° E. 10 poles to the beginning. Reserving however from the effects of this conveyance, the following two tracts or boundaries—1st. Beginning at a beech on the east side of Hurricane branch of the left fork of Ben creek, near the upper end of Smith 66-acre survey, thence up a drain, N. 82° E 20 poles to a chestnut, S. 6° W. 22 poles to a white oak, S. 50° W. 22 poles to three beeches, on bank of branch, N. 11° W. 8 poles to a white oak, N. 3° W. 21 poles to the beginning, containing 3⅗ acres. 2nd. Beginning at a beech on left fk. of Ben — at the mouth of a small drain about 60 rods above said Hatfield's house, thence S. 36° E. 48 poles to a beech on a point, S. 65° E. 32 poles to small crooked sugar, S. 57° E. 24 poles to a white oak, S. 41° E. 8 poles to a gum, S. 38° E. 12 poles to a lynn, S. 11° E. 14 poles to a white oak, S. 22° E. 37 poles to a dogwood,

buckeye, elm, & birch, & up the creek, N. 38° E. 14 poles, N. 15° E. 32 poles, to wahoo sprouts, N. 20° W. 68 poles to a cliff, N. 79° W. 100 poles to the beginning, containing 31 acres. Together with the full and complete rights and privileges of every kind for mining, manufacturing and transporting such coal, gases, salt water, oil and minerals on, through and over the said premises, and in particular the right of exploring for and extracting the said minerals.

And also with full rights of way to, from and over said premises by the construction and use of roads, tramways, railroads or otherwise, for the purpose of exploring, extracting, storeing, handling, manufacturing, refining, shipping or transporting all said minerals, whether contained on the said premises or elsewhere, and for any other purpose whatsoever, and with the full right to take and use all water, stone and timber, except walnut, ash, poplar and oak over 16 inches in diameter, found on said premises required for any of the above purposes; provided, however, that the said parties of the first part shall have the right to take for themselves such coal as they may need for the domestic use of their own family so long as they shall remain on the said premises; or, in case said coal cannot be taken without inconvenience to the mining operations of the party of the second part, then the same shall be delivered by and received from said party of the second part free of charge. Also there is granted a right over and across the reservations herein mentioned for roads, tramways, railroads, or otherwise for transport-ion of any of the minerals and substances above mentioned to the same extent granted over other lands.

Witness the following signatures and seals the day and date first above written.

JOSEPH HATFIELD. [SEAL.]
SARAH D. HATFIELD. [SEAL.]

STATE OF WEST VIRGINIA, }
Logan County, } ss:

I, Charles M. Turley, a notary public in and for the county and State aforesaid, do certify that Joseph Hatfield, whose name is signed to the writing above, bearing date on the — day of October, 1889, has this day acknowledged the same before me in my said county.

Given under my hand this 27th day of December, 1889.

C. M. TURLEY,
Notary Public.

STATE OF WEST VIRGINIA, }
Logan County, } *ss:*

I, M. A. Ferrell, a justice of the peace in and for the county and State aforesaid, do certify that Sarah D. Hatfield the wife of Joseph Hatfield, whose names *are* signed to the above writing, bearing date on the — day of October, 1890, this day personally appeared before me, in the county aforesaid, and being examined by me privily and apart from her husband, and having the said writing fully explained to her, she the said Sarah D. Hatfield acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 25th day of July, 1890.

M. A. FERRELL, *Justice.*

STATE OF WEST VIRGINIA:

In the Clerk's Office of the County Court of Logan County.

This deed from Joseph Hatfield & wife to Henry R. Phillips, trustee, bearing date the 15th day of October, 1889, was this day presented to me, clerk of said court, and the same, together with the certificate of acknowledgment thereon endorsed, is admitted to record in my office aforesaid.

Given under my hand this 6th day of August 1890.

Teste: S. S. ALTIZER,
Clerk of County Court.

[Endorsed:] Joseph Hatfield & wife to Henry R. Phillips, trustee, &c. Dated 15 Oct. 1889. Received for record this 6th day of Aug. 1890. S. S. Altizer clerk. Recorded in Deed Book Big P, page 6. S. S. Altizer clerk.

EXHIBIT No. 14.

STATE OF WEST VIRGINIA, } *To wit:*
County of Logan, }

This day personally appeared before the undersigned authority William Claypool, who upon oath states that about six years ago Attorney H. K. Shumate and one Col. Wilder, who claimed to be an agent for one H. C. King, who was claiming title to a tract of 500,000 acres of land situate partly in the counties of Logan, Wyoming and McDowell, West Virginia, came to this affiant, at his home, on Huff's creek, in said county of Logan, and stated that the said Henry C. King had instituted or was about to institute an action at law or suit in equity, or desired to do so, against affiant and one Sarah D. Hatfield, who was then as well as now residing on Ben creek, formerly Logan, now Mingo county, West Virginia, and others, for the purpose of ousting this affiant, the said Sarah D. Hatfield and others of certain tracts of land occupied and claimed by them under title adverse to the title of the said King to the said 500,000-acre tract, and within what was claimed by the said Henry C. King to be the true exterior boundary lines of the said 500,000-acre tract.

That the said Col. Wilder and the said Attorney H. K. Shumate requested this affiant to allow the said Henry C. King to represent or have represented the said affiant in said action or suit as had been or was expected to be brought against affiant involving the title to his lands in said Logan county, promising said affiant that he should be at no expense in employing counsel to defend his interest therein, or in paying any of the expenses attending the defense of said action or suit, all of which was to be looked after and paid by the said Henry C. King; and that no matter what was the result of said action or suit, when finally determined, that affiant would be fully protected from the consequences thereof, and in no event would affiant lose his said real estate, even though the decision of the courts should be adverse to this affiant. That as affiant understood it at that time, said action or suit had been or was expected to be

brought in the United States district court for the district of West Virginia. That the said Col. Wilder told this affiant that he could gain said land in said action by bribery, but that he did not desire to resort to said means to gain said lands in said action or suit. Affiant further states that he never saw one Henry C. Flesher, an attorney, in regard to looking after his interest in said action or suit, and never employed him as his attorney in said action or suit, nor did he ever employ him in any capacity. Affiant further states that he did not employ said attorney H. K. Shumate to defend or protect his interests in said action or suit.

WILLIAM CLAYPOOL.

Subscribed and sworn to before me this 18th day of February, 1901.

BRUCE MCDONALD,
Notary Public in and for Logan County,
West Virginia.

STATE OF WEST VIRGINIA, *Logan County Court Clerk's Office,* } *To wit:*

I, S. S. Altizer clerk of the county court of said county hereby certify that Bruce McDonald whose name is signed to the foregoing writing bearing date February 18th, 1901, was at the time of signing the same a notary public within and for the county and State aforesaid, duly commissioned and qualified as such, and that his signature thereto is genuine, and that all his acts as such notary public are entitled to full faith and credit.

Given under my hand and the seal of said court, this 23rd day of February, 1901.

[Seal County Court Logan County, West Virginia.]

S. S. ALTIZER, *Clerk.*

EXHIBIT No. 15.

STATE OF WEST VIRGINIA, *County of Logan,* } *To wit:*

This day personally appeared before the undersigned authority, Amanda Claypool, who upon oath states that she is the wife of William Claypool, who has this day made affidavit in regard to a proposition made him by one Col. Wilder and Attorney H. K. Shumate for one Henry C. King. Affiant further states that she was at her home with her said husband about six years ago when the said Col. Wilder and H. K. Shumate came to affiant's home.

That she has just heard read the affidavit of William Claypool, and was present at the time and place mentioned therein, and heard the conversation between the said Col. Wilder, H. K. Shumate and William Claypool, and that affiant understood the said conversation to be the same as detailed by William Claypool in his affidavit.

AMANDA CLAYPOOL.

Subscribed and sworn to before me this 18th day of February, 1901.

BRUCE MCDONALD,
Notary Public in and for Logan County,
West Virginia.

STATE OF WEST VIRGINIA, *Logan County Court Clerk's Office,* } *To wit:*

I, S. S. Altizer, clerk of the county court of said county, hereby certify that Bruce McDonald whose name is signed to the foregoing writing bearing date February 18th, 1901, was at the time of signing the same a notary public within and for the county and State aforesaid, duly commissioned and qualified as such notary public and that all his acts as such are entitled to full faith and credit.

Given under my hand and the seal of said court this 23rd day of February, 1901.

[Seal County Court, Logan County, West Virginia.]

S. S. ALTIZER, *Clerk.*

EXHIBIT No. 16.

UNITED STATES OF AMERICA, }
Southern District of West Virginia, } ss:

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, and as such clerk custodian of the records of the circuit court of the United States for the district of West Virginia sitting at Charleston previous to July 1st 1901, do certify that I have made a careful search among the records and papers in my office and I am unable to find the papers in the case of Henry C. King *vs.* S. S. Altizer *et als.* in ejectment, and that there is no receipt on file for said papers; and that so far as this office shows the papers in said cause are mislaid or lost.

In testimony whereof I hereto set my hand and the seal of said court at Charleston in said district this 14th day of October A. D. 1901, and in the 126th year of the Independence of the United States of America.

{ Seal Circuit Court United States, Southern District West Virginia, Charleston, West Va. }

EDWIN M. KEATLEY,
Clerk C. C. U. S., S. D. W. Va.

EXHIBIT No. 17.

UNITED STATES OF AMERICA, } ss:
Southern District of West Virginia, }

I, Edwin M. Keatley, clerk of the circuit court of the United States for the southern district of West Virginia, and as such clerk having in my custody the records of the circuit court of the United States of the former district of West Virginia, sitting at Charleston, including the law and chancery order books, do hereby certify that I have carefully examined the law and chancery order books in my custody, from the time of entry of the final decree of the 2nd day of June 1900 in the equity cause styled Henry C. King *vs.* S. D. Hatfield *et al.* and I find no decree or order whatsoever upon the said books filing any petition for an appeal from said final decree, or any order or decree allowing an appeal therefrom or approving any appeal bond.

In testimony whereof I hereto set my hand and the seal of said court at Charleston, in said district, this 7th day of October, A. D. 1901, and in the 126 year of the Independence of the United States of America.

{ Seal Circuit Court United States, Southern District }
{ West Virginia, Charleston, West Va. }

EDWIN M. KEATLEY,
Clerk C. C. U. S., S. D. W. Va.

EXHIBIT No. 18.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia hereby certify that the file of papers in the ejectment suit of H. C. King *vs.* S. Altizer & others, was sent from the office at Parkersburg to the office of this court at Charleston, or to one of the attorneys in the case, and have so far as this office is concerned been mislaid or lost.

L. B. DELLICKER, *Clerk.*

Parkersburg Oct. 5th 1901.

EXHIBIT No. 19.

Bill of Complaint & Exhibits.

The bill of complaint of Z. T. Vinson, receiver of Alexander McClintock, against Henry C. King and J. R. Robertson, commissioner of school lands of Wyoming county, filed in the circuit court of Wyoming county, West Va.

The plaintiff complains and says that on the — day of September 1893, by a decree of the circuit court of the United States for the district of West Virginia entered in the chancery cause of Fontaine Bros. *vs.* Alexander McClintock *et al.* then pending in said court he was appointed receiver of all the property, both real and personal, of the said Alexander McClintock situate in the State of West Virginia, and that as such receiver he gave bond and qualified and took possession of said property according to the terms of said decree, and has been from the date thereof until now, and is still acting *acting* under said decree as such receiver. A duly certified copy of said decree is filed herewith as a part hereof, and marked Exhibit "A." That at the date of said appointment the said Alexander McClintock was the owner in fee-simple of a part of what was then and is now known as the De Witt Clinton survey of 142,000 acres of land, situate in said State, and lying partly within the county of Logan, that the said tract of land was granted by the Commonwealth of Virginia to the said De Witt Clinton, as assignee of William Duval, on the 19th day of February, 1796, and that the said McClintock, regularly, derived his said title thereto from the said De Witt Clinton, by sundry conveyances from the said De Witt Clinton and his grantees, all of which will more fully appear from duly certified copies of said conveyances that will be filed herewith in due time as part of this bill, and marked "Exhibits No. 1 to No. — inclusive,"

That your complainant under and by virtue of the decree aforesaid appointing him receiver as aforesaid, and for the purposes of said decree, was and is now the owner of said land.

That on the 7th day of May, 1894, the State of West Vir-

ginia, instituted a suit in chancery in the circuit court of Wyoming county in said State against Henry C. King *et al.* for the purpose of subjecting to sale for the benefit of the school fund so much of a 500,000-acres tract of land as lies in the counties of Wyoming, Logan, Mingo and McDowell, West Virginia, forfeited to the State of West Virginia, and not redeemed, released or otherwise disposed of, by the failure of the owners of the same to have each of such parts of said 500,000-acre tract as lies in the counties aforesaid, entered upon the land books of the county in which it is situated, and assessed with State taxes thereon for more than five successive years from the year 1883 to the year 1894, inclusive, which said tract was known as the Rob't Morris survey and was granted to the said Robert Morris by the Commonwealth of Virginia on the 23d day of June, 1795, all of which will more fully appear from a duly certified copy of the record of said suit, filed herewith as a part hereof and marked "Exhibit B." That the said Henry C. King filed his answer in said suit, alleging himself to be the legal and equitable owner of the whole of the said 500,000-acre tract by title regularly derived by mesne conveyances from the said Rob't Morris, alleging that the same had been redeemed by his predecessors in pursuance of a decree entered by the circuit court of Wyoming county in the year 1883, and that the same had not since been legally forfeited, but offering to redeem the same in the event such forfeiture should be held to be valid. All of which will more fully appear from "Exhibit B" hereinafter referred to.

That Alexander McClintock likewise appeared and filed his petition in said suit wherein he alleged his ownership as aforesaid of the said De Witt Clinton 142,000-acre tract, and denied the ownership of the 500,000-acre tract by the said Henry C. King, and denied his right to redeem the same. Which said answer will more fully appear by reference to "Exhibit B" hereinbefore referred to. That subsequently, that is to say on the — day of March, 1895, and while the said suit in chancery was still pending in the circuit court of Wyoming county as aforesaid and before any decree of redemption of the 500,000-acre tract had been entered therein the said Henry C. King instituted an action of ejectment in the circuit court of the United States for the district of West Virginia, for the recovery of the said 500,000-acre tract of land against S. S. Altizer *et al.* That the said Alexander

McClintock, John McClintock and M. B. Mullins were parties defendant to said action of ejectment. That the plaintiff therein Henry C. King was permitted by the court to select said last-named defendants as the ones against whom he would first try his action of ejectment, and that said action was tried against them, and ended in a verdict and judgment in favor of the said Alexander McClintock, John McClintock and M. B. Mullens and against the said Henry C. King which said judgment was entered on the 27th day of February, 1896, by the circuit court of the United States at Parkersburg.

The complainant further says that the land sought to be recovered by the said Henry C. King in said action of ejectment of the said Alexander McClintock, John McClintock and M. B. Mullens was a part of the De Witt Clinton survey of 142,000 acres hereinbefore described, and that it was and is a part of the land sought to be redeemed by the said Henry C. King in the chancery suit hereinbefore described as pending in the circuit court of Wyoming county. That the ground upon which said action of ejectment was defeated wholly—because it appeared at the trial thereof that the title of the said Henry C. King to the 500,000-acre tract had been forfeited and had not been redeemed released or relieved therefrom in any manner, shape or form. All of which will more fully appear from a duly certified transcript of said action of ejectment filed as a part hereof marked "Exhibit C."

That subsequently that is to say on the — day of ——, 1896, the said Henry C. King procured a writ of error to the judgment aforesaid in the action of ejectment for the purpose of reviewing the same in the Supreme Court of the United States, and that such action is now pending in said last-named court upon said writ.

That after the procurement of said writ of error and pending the same *a written stipulation was entered into by and between M. F. Stiles the counsel of record for the said Henry C. King, both in the redemption proceeding then pending as aforesaid in the circuit court of Wyoming county and in the action of ejectment aforesaid in the circuit court of the United States, as well as in the Supreme Court of the United States in the same, and John A. Sheppard who was counsel for and representing Alexander McClintock, both in said action of ejectment and said proceeding in the circuit court of Wyoming county, whereby it*

was agreed that the said suit aforesaid pending in the circuit court of Wyoming county should be continued by the court and commissioner before whom the same was then pending, and no steps taken therein until the case of King vs. Mullins and McClintock which was the action of ejectment aforesaid should be decided by the Supreme Court of the United States, said stipulation was and is in the words and figures following, to wit:

In the Circuit Court of West Virginia for the County of Wyoming.

STATE OF WEST VIRGINIA
vs.
HENRY C. KING ET AL. } In Chancery.

It is hereby agreed by the parties represented by the undersigned counsel, that the above-styled cause shall be continued by the court and commissioner before whom the same is now pending, until the case of King *vs.* Mullins and McClintock shall be decided by the Supreme Court of the United States, which case is to be submitted upon briefs within the first ninety days of the present term of said Supreme Court; but if said court should require oral argument in addition to the briefs and should not decide said case upon such submission, then this cause shall not be continued after the refusal of said court to decide said cause, by reason of this stipulation but shall be proceeded with according to the rules governing such cases.

(Signed) M. F. STILES.
M. F. STILES,
Of Counsel for Henry C. King.
JOHN A. SHEPPARD,
Of Counsel for Alexander McClintock.

That the said case of King *vs.* Mullins and McClintock was, pursuant to said stipulation, submitted upon briefs within the first ninety days of the term of the Supreme Court of the United States mentioned in said stipulation and said Supreme Court did not require oral argument in addition to said briefs, but took said case under consideration and the same is now submitted and pending and undecided before said court. That at the time said stipulation was entered into one J. R. Robertson was the commissioner to

whom said cause had been referred by the circuit court of Wyoming county, and before whom it was then pending; that he was immediately notified of said stipulation and the agreement of said parties; that subsequently he resigned as such commissioner and one D. A. Robertson was appointed in his place, which said last-named commissioner likewise had full notice and knowledge of said stipulation.

That at the September term 1897, *notwithstanding said stipulation and in violation thereof, without notice to this complainant or to the said Alexander McClintock, or to the said John A. Sheppard, his counsel, and after the submission of the said case of King vs. McClintock and Mullins to the Supreme Court of the United States upon written briefs and before the decision of the same the said Henry C. King through his counsel M. F. Stiles procured a report of the commissioner D. A. Robertson last named in the said chancery cause of The State of West Virginia vs. Henry C. King et al. and prepared and caused to be entered in said cause by the circuit court of Wyoming county a decree of redemption by the said Henry C. King of such portion of the* 500,000 *acres tract of land as lies in the State of West Virginia.*

Said decree recites the payment by the said Henry C. King to the commissioner of school lands of Wyoming county of all costs, taxes and interests chargeable upon said land up to and including the year 1897, fixes the boundary of said land as contended for by the said King and in accordance with the map and survey made thereof by one Sell, adjudges that none of the other defendants in said proceeding has any interest in said land and adjudges, orders and decrees that the same is redeemed by the said King in accordance with the recitals of said decree. A certified copy of said decree is filed herewith as a part hereof marked "Exhibit D."

The complainant further says that a part of the said De Witt Clinton survey of 142,000 acres is embraced by the said survey of 500,000 acres as surveyed by the said Sells, and as redeemed by the decree aforesaid; that said decree, if permitted to stand, will be to his great prejudice and wrong; that the same was procured and entered without his knowledge in violation of his rights, in rank violation of the stipulation hereinbefore set out, and through the schemes, deceit and fraud, as aforesaid, of the said Henry C. King. The plaintiff therefore prays that Henry C. King

and J. R. Robertson, the commissioner of school lands for the county of Wyoming be made parties defendant hereto, and that process issue against them; that said decree of redemption may be set aside, cancelled and held for naught; that the said J. R. Robertson, commissioner of school lands as aforesaid may be enjoined from paying over to the State or disposing of in any way, in whole or in part of the money paid to him by the said Henry C. King in said decree of redemption, and that the said Henry C. King be enjoined and inhibited from taking advantage in any way of his said decree of redemption and for such further and general relief as the court may see fit to grant, and your complainant will ever pray and so forth.

Z. T. Vinson,
Receiver of Alexander McClintock, by Counsel.

State of West Virginia, }
Mingo County, } *To wit:*

John A. Sheppard, of counsel for the plaintiff herein, being duly sworn, says that he has read and is familiar with the allegations in the foregoing bill, and that the facts and allegations therein contained are true except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

John A. Sheppard.

Taken, sworn to and subscribed before me this 20th day of October, 1897.

Wills Goodykoontz.

Wm. R. Thompson,
Campbell, Holt & Campbell,
Jno. A. Sheppard,
Counsel for Pl'ff.

United States of America, }
District of West Virginia, } *ss:*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do hereby certify that the foregoing is a true copy of the bill of complaint in the case of Z. T. Vinson, receiver of Alexander McClintock

vs. Henry C. King *et al.* in chancery, as appears from a transcript of record from the circuit court of Wyoming county, W. Va., on file in my office with the papers in said cause.

In testimony whereof I have hereunto set my hand and the seal of said court this 11th day of February, A. D. 1901 and in the 125th year of the Independence of the United States of America.

{ Seal Circuit Court, United States District, West Virginia; Charleston, West Va. }

L. B. DELLICKER, *Clerk.*

Order in Vacation.

WEST VIRGINIA:

In Vacation of the Circuit Court of Wyoming County, this the 21st Day of October, 1897, at Davy, W. Va.

Z. T. VINSON, Receiver, Plaintiff,
vs.
HENRY C. KING ET AL., Defendants. } In Chancery.

This day Z. T. Vinson, receiver of Alexander McClintock, presented to the judge of the circuit court of Wyoming county, in vacation, his bill praying an injunction against J. R. Robertson, commissioner of school lands of Wyoming county, and Henry C. King; and the said judge having seen said bill, and maturely considered thereof, is of opinion to grant said injunction. It is therefore adjudged, ordered and decreed that the said J. R. Robertson, commissioner of school lands of the said Wyoming county, be enjoined, restrained and inhibited from paying out to any person or for any purpose any money received, or which may be hereafter received by him, from the said Henry C. King, or any other person, for the redemption of the land described in the decree made at the September term, 1897, of the circuit court of Wyoming county, in the case of The State of West Virginia *vs.* Henry C. King *et al.* pending in said court until the further order of this court. And it is further adjudged, ordered and decreed that Henry C. King, and all persons claiming under him, their agents and attorneys, be, and they are, hereby enjoined, restrained and inhibited from

taking advantage in any way of said decree of redemption, made at the September term, 1897, of the circuit court of Wyoming county in the case last aforesaid. But this injunction shall not take effect until the plaintiff or some one for him, shall execute a bond in the penalty of $500.00 with security to be approved by said clerk, and to pay all costs and damages that may be awarded against the plaintiff, or result to any one by reason of said injunction, in case the same be dissolved.

JOSEPH M. SANDERS,
Judge of the Circuit Court of Wyoming Co., W. Va.

To the clerk of the circuit court of Wyoming county, West Virginia,

J. M. S.

STATE OF WEST VIRGINIA, }
County of Wyoming, } *To wit:*

I, E. M. Senter, clerk of the circuit court of Wyoming county, West Virginia, do hereby certify that the foregoing writing is a true copy of the injunction granted by Joseph M. Sanders, judge of the circuit court of Wyoming county, West Virginia, on the 21st day of October, 1897, and I further certify that the bond required to be given in said injunction has been given conditioned according to the terms of the injunction and approved by me.

Given under my hand this the 29th day of October, 1897.

E. M. SENTER, *Clerk.*

(Endorsement of sheriff.)

Executed by delivering to the within-named J. R. Robertson an office copy of the within summons, and order of injunction on the 29th day of October 1897, at 4 o'clock p. m.

D. J. COOK, *Dept.*,
For B. P. COOK, *S. W. C.*

Henry C. King not found within my bailiwick, this Nov. 1st, 1897.

D. J. COOK, *Dept.*,
For B. P. COOK, *S. W. C.*

UNITED STATES OF AMERICA, }
District of West Virginia, } ss:

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do hereby certify that the foregoing is a true copy of a restraining order duly entered in the chancery cause of Z. T. Vinson, receiver of Alexander McClintock *vs.* Henry C. King and J. R. Robertson, commissioner of school lands of Wyoming county, West Virginia, in the circuit court of Wyoming county, West Virginia, as appears from a transcript of the record of said cause from said court on file in my office, said cause having been removed from said circuit court of Wyoming county into the circuit court of the United States for the district of West Virginia, aforesaid.

In testimony whereof I have hereunto set my hand and the seal of said court this 11th day of February, A. D. 1901, and in the 125th year of the Independence of the United States of America.

{ Seal Circuit Court, United States District, }
{ West Virginia; Charleston, West Va. }

L. B. DELLICKER, *Clerk.*

EXHIBIT No. 20.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 2d day of July, 1895, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
SIMON ALTIZER ET AL. } In Ejectment.

On this 28th day of June, 1895, comes William Claypool, who is one of the defendants in the said action of ejectment by his attorneys W. E. Chilton, John A. Sheppard and Jno. A. Hutchinson and filed the affidavits of himself and B. M. Mullins, which are made part of this order, and moved the court for a rule against Henry C. Flesher to show cause, if any he can, by what authority he signed his name as attorney for said William Claypool to the alleged agreement of facts in this action bearing date June 15th, 1895, and by what authority he signed the name of said Claypool to said agreement of facts, and at whose instance and request he has so done; and said Claypool also moved the court for a rule against the said Henry C. Shumate, V. A. Wilder and H. K. Shumate to show cause, if any they can, why they should not be fined and attached for their contempt to us offered in attempting and conspiring to impose upon this court a false and fraudulent agreement of facts in the said action, as to an agreed case, and thereby to deceive the court and to pervert the course of justice therein, and to the injury of said Claypool and others, parties defendant in said action, and others materially interested with the defendants in the determination of the question presented in said false and fraudulent agreement of June 15th, 1895; and said Claypool also moved the court for a rule against the said Henry C. Flesher and H. K. Shumate, who are attorneys of this court, to show cause why they should not be disbarred from practice in this court by reason of the matters set forth in said affidavits.

And thereupon the court doth order that the rule against

the said Henry C. Flesher first above prayed for be issued, returnable on the 4th day of September, 1895. And the court doth refuse to award rules against Flesher, Wilder & Shumate as last above prayed for.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 2d day of July, 1895, in the ejectment case of H. C. King *v.* Simon Altizer, *et al.*, therein pending. And I further certify that the records of my said office, at Parkersburg, fail to show that the rule hereinabove awarded has been disposed of to this date.

Given under my hand, and seal of said court, at Parkersburg, in said district, this 5th day of February, 1901.

{ Seal Circuit Court United States, District West Virginia, Parkersburg, West Va. }

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

EXHIBIT No. 21.

Know all men by these presents that I Nancy C. Browning formerly Nancy C. Rutherford of Mingo county West Virginia do hereby retain authorize and empower W. P. Hubbard Esq. of Wheeling Hon. E. P. Rucker of Welch, C. W. Campbell of Huntington and Jno. A. Sheppard of Williamson and all of West Virginia to appear for and represent me in that certain cause of Henry C. King against Sarah D. Hatfield and Nancy C. Rutherford now pending on appeal in the Supreme Court of the United States under the style of Sarah D. Hatfield and Nancy C. Rutherford against Henry C. King. And I do hereby empower authorize and direct my said attorneys to do for me and in my defense in said cause such things and take such steps therein as they may be advised is proper and necessary to protect my interest.

Given under my hand this 13th day of September 1901.

NANCY C. BROWNING.

Acknowledged before the subscriber Sept. 13th 1901.

M. A. HATFIELD, *Justice.*

EXHIBIT No. 22.

STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

John A. Sheppard, being first duly sworn, upon oath, says: That about the first of February, 1901, he, together with C. W. Campbell, examined the clerk's office of the United States circuit court for the district of West Virginia at Parkersburg, for the purpose of finding an agreed statement of facts purporting to have been made between Henry C. King of the one part and Sarah D. Hatfield, Nancy C. Rutherford and William Clapool of the other part, the latter three of whose names were signed thereto by Henry C. Flesher as attorney, which agreed statement of facts, dated June 15, 1895, was filed in said clerk's office at Parkersburg in the case of Henry C. King against Simon S. Altizer and others; that during such examination they were aided by Col. L. E. Dellicker, clerk of the circuit court of the United States for the district of West Virginia; that they failed to find said agreed statement of facts, and that the whole file of the said case of King against Altizer was missing. Affiant was informed by said clerk that the whole of the said file of papers had been sent to the clerk's office at Charleston, West Virginia.

Affiant further says that he went to the office of the clerk of the circuit court of the United States at Charleston and made inquiry of J. T. Watters, the then acting deputy clerk, as to the whereabouts of said file, and was informed by said deputy clerk that he had some recollection of a large file of papers being received at his office from Parkersburg during a term of court, which he thought was the file of King against Altizer and others; that said clerk, Col. Dellicker, came into the office at Charleston and asked said deputy clerk if a file of papers had come from Parkersburg, and, being informed that they had, said clerk directed his said deputy to turn the same over to Col. E. L. Butterick, which the said deputy informed affiant he did. Affiant was unable to find any of the file of papers, or the agreed statement of facts referred to, in the clerk's office at Charleston

The said deputy clerk, Watters, then caused inquiry to be made of Col. Butterick, and affiant was informed that said Butterick claimed that he did not have the papers or the agreed statement of facts and knew nothing of their whereabouts. Affiant also went to the office occupied by said Butterick and M. F. Stiles, who was the attorney for Henry C. King, and made inquiry of his stenographer and of said Stiles as to the whereabouts of said agreed statement of facts and file of papers, but was informed that they were not in the office and that they knew not where they were.

Affiant further says that he was making a search for said file of papers and agreed statement of facts for the purpose of trying to ascertain, if possible, the origin of the case of H. C. King against Sarah D. Hatfield and Nancy C. Rutherford, which affiant had a short time before been informed had been decided by the district judge for the district of West Virginia, and was then pending on appeal in the Supreme Court of the United States, where it appeared to have been carried by the defendants, Hatfield and Rutherford.

Affiant then made inquiry of the said deputy clerk, J. T. Watters, and was informed by him that M. F. Stiles, attorney for Henry C. King, brought into his office a typewritten copy of what he called the record in the case of King against Sarah D. Hatfield and Nancy C. Rutherford, and requested said deputy to certify the same, which the said deputy refused to do, stating that he did not have the file of papers; whereupon said Stiles returned to his own law office and brought back the file of papers, but that said deputy clerk still refused to certify the copy, stating to said Stiles that the file had not been in his office, and that there were orders in the file endorsed to be entered by the district judge, but not in fact entered, and that if he, said Stiles, wanted the record certified, he would have to go to Parkersburg to Col. Dellicker, the clerk; that said Stiles insisted upon said deputy certifying the record and stated that he was anxious to have the same done so as to send it at once to the city of Washington to procure an appeal, and that all parties to the suit were equally anxious, and that he, said Stiles, would see that the cost of the record was paid, but that said deputy still refused to certify the writing.

Affiant was further informed by said Watters that at a later date the question of paying for the record in said case of King against Hatfield and Rutherford was mentioned to

said Stiles, and he obligated himself to Col. Dellicker, the clerk, to pay for the same.

Affiant was further informed by said deputy clerk that he was familiar with all the cases pending in the court at Charleston, of which he was deputy clerk; that the said file of papers in the case of King against Hatfield and Rutherford were kept out of the clerk's office; that Henry C. Flesher, who was marked as counsel for the defendants in said cause, did not appear in said cause in court, and, so far as he knew, was not present when any steps were taken therein, if, in fact, any were taken in court, and that the defendants, Sarah D. Hatfield and Nancy C. Rutherford, were never present either in the clerk's office or in the court at any time to protect their interest in said cause.

Affiant further says that he requested said deputy clerk, Watters, to give him an affidavit showing the information given as above stated, but said deputy clerk stated that he did not feel at liberty to do so, unless affiant would obtain the consent of his principal, Col. Dellicker, that he give such affidavit. JNO. A. SHEPPARD.

Subscribed and sworn to before me in the county aforesaid this 27th day of September, 1901.

RUDD T. NEEL,
Notary Public, Cabell County, West Va.

STATE OF WEST VIRGINIA, }
Cabell County Court Clerk's Office. }

I, F. L. Doolittle, clerk of the county court of Cabell county, in the State aforesaid, do hereby certify that Rudd T. Neel whose name is signed to the annexed certificate bearing date the 27th day of September 1901 is a notary public in and for said county, duly commissioned and qualified, and is authorized by the laws of this State to take the acknowledgment of deeds and other writings, to administer oaths, and to take affidavits; and that the name thereto subscribed is, I verily believe, his genuine signature.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at the court-house of said county, this 27th day of September 1901.

[Seal County Court, Cabell County, West Virginia.]

F. L. DOOLITTLE,
Clerk Cabell County Court.

EXHIBIT No. 23.

STATE OF WEST VIRGINIA, *County of Mingo,* } *To wit:*

A. M. Toler being first duly sworn upon oath says that he is about sixty-seven years of age, that since the year 1858 he has resided on the left fork of Ben creek in Logan now Mingo county then Virginia but now West Virginia that he was well acquainted with Aly Hatfield who died in February 1870; that he was well acquainted with Joseph Hatfield a son of said Aly Hatfield; that on the 28th day of September 1858 affiant intermarried with Martha Hatfield a daughter of the said Aly Hatfield; that the said Aly Hatfield left the following-named children surviving him viz. Joseph Hatfield, Phœba Ferrell, Nancy Ellis Martha Toler and one grandchild Leander Hatfield son of Wesley Hatfield a son of Aly Hatfield.

Affiant further says he is thoroughly well acquainted with the lands of the said Aly Hatfield situate on the left fork of Ben creek now in Mingo county but formerly in Logan county in said State of West Virginia and particularly with the two tracts of 450 and 330 acres granted by the Commonwealth of Virginia to said Aly Hatfield in 1859; that said two tracts of land adjoin other lands owned by the said Aly Hatfield and after his death by his son Joseph and after his death by Sarah D. Hatfield widow and Nancy C. Browning daughter of said Joseph Hatfield that in 1862 or 1863 said Aly Hatfield moved to and continued to live upon said lands until his death except the portion thereof conveyed to his children; that in 1861 said Aly Hatfield conveyed to his daughter Martha the wife of affiant a portion of said tract of 330 acres granted as aforesaid which portion is estimated to contain about 150 acres. He also conveyed by the same deed another adjoining tract supposed to contain about 50 acres; that about 1865 affiant moved with his family upon said land so conveyed to his wife and has from that day to this continued to reside upon said land; that he cleared enclosed and cultivated a large part of said land so carved out of said tract of 330 acres more than twenty-five

years ago and his wife Martha was in the actual visable, adverse and exclusive and continuous possession of said land so conveyed to her from 1865 till her death in 1891 and her children and affiant have been and still are in such actual possession of all of said land by residence enclosure and cultivation.

That Joseph Hatfield son of said Aly had the actual adverse exclusive and continuous possession by residence cultivation and enclosure of the said 450 acres and the residue of said 330 acres from the death of his father Aly till his own death in March 1893 and his wife Sarah D. and his daughter Nancy C. have continuously resided upon and adversely held said lands since said date.

That neith- the said Henry C. King nor any person under whom he claims said Morris grant ever had possession of any part of the lands of said Aly Hatfield or of the said Joseph or of the said Sarah D. Hatfield and their daughter Nancy C. since affiant's knowledge of said lands in 1858 nor did he or they to affiant's knowledge or information ever clear enclose or oc-upy a single foot of said Morris grant situate in West Virginia. Affiant is well acquainted with the ter-itory in West Virginia now claimed by said King to be covered by said Morris grant and no part of such ter-itory to the knowledge or information of affiant was ever possessed or oc-upied by said Henry C. King or those under whom he holds and every part thereof except perhaps some small scraps principally situate along the mountain tops and spurs and undesirable in character or value have been occupied lived upon and adversely held by the citizens under grants from Virginia and West Virginia.

That affiant is fairly well acquainted with the citizens throughout said ter-itory and if said King or any of his predecessors in claims had ever oc-upied any portion of said ter-itory he most likely would have known it personally or by information from the citizens.

A. M. Toler.

Taken subscribed and sworn to before me this September 13th 1901.

M. A. Hatfield, *Justice.*

STATE OF WEST VIRGINIA, } *To wit:*
Mingo County, }

I, James Damron, clerk of the county court which is a court of record, in and for the county and State aforesaid, do certify that M. A. Hatfield whose name is signed to the foregoing writing was, on the 13th day of September, 1901, a justice of the peace (duly qualified) in and for the county and State last mentioned, and that he is authorized under the laws of my said State to administer an oath. I further certify that I am acquainted with his signature and that his signature as signed to the foregoing writing is genuine.

Given under my hand and official seal this the 16th day of Sept. 1901.

[Seal County Court, Mingo County, West Virginia.]

JAMES DAMRON, *Clerk.*

EXHIBIT No. 24.

PARKERSBURG, W. VA., *Oct. 4th*, 1901.

Messrs. Holmes Conrad, W. P. Hubbard, Edward C. Lyon, and Campbell, Holt & Campbell.

GENTLEMEN: Some time ago Sarah D. Hatfield, with whom I have been acquainted for years, told me in confidence the inside history of the origin and conduct of the case of Henry C. King against herself and others now pending on appeal in the Supreme Court of the United States, and has since given me an affidavit embodying such history, but only after an assurance from me that I would not use it unless it became necessary in order to secure an order remanding the cause to the circuit court of the United States, and that it would not be used even in that event if using it would result in the loss of her land. Of this question I was to be the judge, and I am of the opinion that the affidavit may be used with safety to Mrs. Hatfield; for, while it may show such a collusion and improper arrangement between her and the representatives of Henry C. King in the suit of said King *vs.* S. S. Altizer *et al.*, involving the lands embraced in the present controversy as might, if entered into in the present suit, constrain the Supreme Court, in the event it should remand or dismiss it in consequence thereof, to affirm the decree of the circuit court in so far as it affects Mrs. Hatfield in consequence of her being *in pari delicto* with King, still it would not do so in the present suit because she made no agreement about the present suit and it appears from her affidavit that she never knew of its institution even until after it had resulted in a final decree in the circuit court and had been appealed to the Supreme Court.

The affidavit is of such a character as to be useful to us, and I believe for the above reason, may be used with safety to Mrs. Hatfield; but I hesitate to use it for fear I may be mistaken in my view, and, in that event, I might be the innocent means of depriving her of her property. I would like, therefore, to have the benefit of your views upon the probable legal effect upon Mrs. Hatfield of the use of her

affidavit, and also for you to communicate to our clients interested in the matter the fact of the existence of the affidavit and the conditional secrecy under which it was obtained and is held; for, although I have made the woman no promises, except as above stated, still, in the event I should exercise my discretion to use the affidavit, and should, in consequence of mistaken judgment, injure her, I would feel that she should be made whole by some one.

Very respectfully, JNO. A. SHEPPARD.

EXHIBIT No. 25.

WASHINGTON, D. C., *October 10th*, 1901.

Mr. John A. Sheppard, Williamson, W. Va.

DEAR SIR: Mr. Edward C. Lyon has handed us a copy of your letter of the 4th instant to himself, Mr. Conrad, Mr. Hubbard, and Campbell, Holt & Campbell, concerning the use of the Sarah D. Hatfield affidavit, and with the statement that he and they agreed with you that the affidavit might probably be used with safety to Mrs. Hatfield and with propriety to yourself.

We hope, therefore, that you will permit the affidavit to be used; and, while it appears from what you and your associates say, that there is little or no danger of loss resulting to her, still, in order that you may be relieved of all anxiety in the premises, we agree that, if the affidavit be used, we will hold Mrs. Hatfield harmless against all consequent loss to her.

In addition, we would say that we are advised that it may become proper to give the court a full account of the manner of the procurement of the affidavit in question, and we therefore request that you give us its history in the form of an affidavit.

Very respectfully,

STUART ROSS.
EGBERT MILLS.
EGBERT MILLS, *Trustee.*
ARTHUR D. BRIGHT.
ARTHUR D. BRIGHT, *Trustee.*
WILLIAM H. LAWSON.
WILLIAM KRONENWET.

EXHIBIT No. 26.

DISTRICT OF COLUMBIA, }
City of Washington, } *ss:*

Edward C. Lyon of full age being duly sworn according to law on his oath says that he is a counsellor-at-law and resides at Morristown, New Jersey, and as such counsellor represents with others Egbert Mills, Egbert Mills, trustee, Arthur D. Bright, Arthur D. Bright, trustee, William H. Lawson, William H. Lawson, trustee and William Kronenwet, who are defendants in the case of The State of West Virginia *vs.* Henry C. King and some four hundred other defendants, now pending in the circuit court of Cabell county, West Virginia, a number of which defendants or those under whom they claim being also defendants in the action of ejectment brought in the circuit court of the United States for the district of West Virginia by Henry C. King against S. S. Altizer, S. D. Hatfield, W. C. Mullens and numerous others.

That he has been frequently in the State of West Virginia during the past two years chiefly for the purpose of looking after the interests of his said clients who own large bodies of land within the bounds of the Robert Morris 500,000-acre survey as said bounds are claimed by said King, spending much of his time in said State and that a large part of his time during the said two years has been occupied in looking after the interests of his said clients, that he has been a number of times during said period in the office of the clerk of the circuit court of the United States at Charleston, West Virginia, and also in the office of the clerk of the circuit court of the United States at Parkersburg, West Virginia. That he has endeavored to keep informed of all litigation affecting his said clients, and of all suits in which the same questions as those arising in said litigation were involved and of suits in which the validity of the claim of said Henry C. King and the Morris survey were involved and has made inquiry for such suits in said clerks' offices and has been diligent in said inquiry.

That this deponent knew nothing of and never heard of the institution or pendency of the suit of Henry C. King *vs.*

S. D. Hatfield and Nancy C. Rutherford instituted in the circuit court of the United States for the district of West Virginia at Charleston, nor of the opinion filed by the judge in said cause nor of the appeal taken to the Supreme Court of the United States until after said appeal had been taken and the cause submitted in the Supreme Court of the United States, and that if this deponent had had knowledge of said suit he would have made an effort to have had the interest of said clients protected and a full defense made to that suit, or have made an effort to procure its dismissal.

EDWARD C. LYON.

Sworn to and subscribed to before me this 26th day of October, A. D. 1901.

{ Seal of William H. Baden, Notary Public, District of Columbia. }

WILLIAM H. BADEN,
Notary Public, D. C.

EXHIBIT No. 27.

STATE OF WEST VIRGINIA, *Mingo County,* } *To wit:*

S. U. G. Rhodes, being first duly sworn, upon his oath says:

On the 15th day of October, 1901, I received a letter from Nancy C. Browning, (formerly Nancy C. Rutherford) requesting my services as attorney for her in the case pending in the Supreme Court of the United States, and therein styled Sarah D. Hatfield and Nancy C. Rutherford against Henry C. King. I herewith file the letter so received, as part of this affidavit, marked "Browning."

I accepted the employment and pursuant thereto went to see Major H. C. Flesher, in relation to said suit. I found him on his farm in Jackson county on the 18th of the present month. He asked me where I was going and I told him I had come to see him on some business—that I represented Nancy C. Browning, formerly Nancy C. Rutherford, and showed him the letter I had received from Mrs. Browning, which is herewith filed. He asked me what I desired to know about the case, and I told him I wanted to know why he appeared for Nancy C. Rutherford, as he was not employed by her. He said that he never appeared in the case for her. I told him that the record showed that he appeared for Nancy C. Rutherford and Sarah D. Hatfield. He then said that Sarah D. Hatfield employed him to appear for them both. I asked him why he had not filed an answer in the case. He replied that he appeared and entered a demurrer only. I told him he ought to have filed an answer in the case, setting up the fact that Sarah D. Hatfield and Nancy C. Rutherford had been in possession of the land for 30 years or longer, and had been paying taxes on the same for that length of time. He replied by asking me if I had known them for thirty years, and I told him I had known them but ten years. He further added that if I knew more law than he did, to proceed with the case and do what I could; or, if I thought I could defeat Henry C. King, to sail in. I further asked him who paid for copying the record for ap-

peal, and if he had anything charged to my client, Nancy C. Browning. He replied "Your client has not paid anything, has she?" To which I said "No." He said "Well, there is nothing charged against her. The copying of the record has been settled and if your client has paid nothing, she has no right to kick, and my appearing for Sarah D. Hatfield and Nancy C. Rutherford has in no way prejudiced their rights, for they will both be taken care of regardless of how the suit is decided in the Supreme Court." I asked him in what way they would be taken care of or provided for, to which he replied "They will both be taken care of and that is enough for me to say to you."

Affiant further says that the foregoing is all the information that he was able to obtain from said Flesher in relation to the suit above mentioned.

S. U. G. RHODES.

Taken, subscribed and sworn to, as witness my hand and official seal this 28th day of October, 1901.

[Seal County Court, Mingo County, West Virginia.]

JNO. P. WAYMAN,
Deputy Clerk Co. Ct., Mingo Co., W. Va.

Copy.

WHARNCLIFFE, W. VA., *Oct. —th*, 1901.

Mr. S. U. G. Rhodes:

I have learned that Henry C. King has one my land in a suit broght before Juge Jackson and that Mr. Flesher of Welch apeared for me in the case I do not see why he should hav done so for I did not employ him and I want you to look after my interst and make Mr. Flesher explain to you why he has acted as my lawyer and lost my land please do this at once.

NANCY C. BROWNING.